

9-13-2012

Bank of Commerce v. Jefferson Enterprises Clerk's Record v. 2 Dckt. 40034

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Vol. 2 of 3

SUPREME COURT OF THE STATE OF IDAHO

THE BANK OF COMMERCE, an Idaho Banking Corp.

Plaintiff-Respondent

vs.

LAW CLERK
JEFFERSON ENTERPRISES, LLC, AN

Idaho Limited Liability Company

Defendant-Appellant

Hon. Robert C. Naftz District Judge

Appealed from the District Court of the Sixth
Judicial District of the State of Idaho, in and for
Bannock County.

A. Bruce Larson

ABLE LAW PC

Attorney X For Appellant X

Brian T. Tucker

NELSON HALL PARRY TUCKER, P.A.

Attorney X For Respondent X

Filed this 2/3 day of

2012

FILED - COPY

SEP 13 2012

Clerk

Deputy

40034

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VOLUME III

The Bank Of Commerce vs. Jefferson Enterprises LLC, Dustin Morrison, Sonya Morrison, City of Pocatello

Date	Code	User		Judge
10/21/2008	LOCT	MARLEA	Clerk's Vault	Peter D. McDermott
	NCOC	MARLEA	New Case Filed-Other Claims	Peter D. McDermott
	COMP	MARLEA	Complaint to Foreclose Real Estate Mortgage.	Peter D. McDermott
	SMIS	MARLEA	Summons Issued (4)	Peter D. McDermott
		MARLEA	Filing: A - Civil Complaint for more than \$1,000.00 Paid by: anerson Receipt number: 0039209 Dated: 10/21/2008 Amount: \$88.00 (Check) For:	Peter D. McDermott
	ATTR	CINDYBF	Plaintiff: The Bank Of Commerce Attorney Retained Brian T Tucker	Peter D. McDermott
		CINDYBF	Notice of Lis Pendens- by pltf thru PA Tucker.	Peter D. McDermott
11/12/2008	AFFD	CAMILLE	Affidavit of service - srvd on Rhonda Johnson on 10-29-08	Peter D. McDermott
11/13/2008	AMCO	CAMILLE	Amended Complaint to Foreclose Real Estate Mortgage; aty Brian Tucker for plntf	Peter D. McDermott
11/14/2008		MARLEA	Filing: I7 - All Other Cases Paid by: robinson and associates Receipt number: 0042733 Dated: 11/14/2008 Amount: \$58.00 (Check) For: Morrison, Dustin (defendant)	Peter D. McDermott
	NOAP	CAMILLE	Notice Of Appearance; aty Brent Robinson for Scott and Jennifer Dayley Snake River Jerseys	Peter D. McDermott
	NOAP	CAMILLE	Notice Of Appearance; aty Brent Robinson for Jefferson Enterprises, LLC and Idaho Limited Liability Company, Dustin Morrison and Sonya Kidd aka Sonya Morrison;	Peter D. McDermott
	ATTR	CAMILLE	Defendant: Jefferson Enterprises LLC Attorney Retained Brent T Robinson	Peter D. McDermott
	ATTR	CAMILLE	Defendant: Morrison, Dustin Attorney Retained Brent T Robinson	Peter D. McDermott
	ATTR	CAMILLE	Defendant: Morrison, Sonya Attorney Retained Brent T Robinson	Peter D. McDermott
11/17/2008	AFDS	CINDYBF	Affidavit of Service - Summons & Complaint served Dustin Morrison thru Sonya Morrison, wife, on 11-8-08.	Peter D. McDermott
	AFDS	CINDYBF	Affidavit of Service - Summons & Complaint served Sonya Kidd aka Sonya Morrison 11-8-08.	Peter D. McDermott
	AFDS	CINDYBF	Affidavit of Service - Summons & Complaint served Jefferson Enterprises thru Dustin Morrison, 11-11-08.	Peter D. McDermott
11/24/2008	HRSC	CAMILLE	Hearing Scheduled (Court Trial 03/10/2009 09:00 AM)	Peter D. McDermott
12/2/2008	NOTC	CAMILLE	Notice of Appearance to Amended Complaint to Foreclose Real Estate Mortgage; aty Kirk Bybee for def City of Pocatello	Peter D. McDermott
	ATTR	CAMILLE	Defendant: City of Pocatello Attorney Retained D Kirk Bybee	Peter D. McDermott

The Bank Of Commerce vs. Jefferson Enterprises LLC, Dustin Morrison, Sonya Morrison, City of Pocatello

Date	Code	User	Judge
12/8/2008	NOTC	CAMILLE	Notice of intent to take default; aty Brian Tucker for Bank of commerce Peter D. McDermott
12/12/2008	ANSW	CAMILLE	Answer to Amended Complaint to Foreclose Real Estate Mortgage and Counterclaim and Demand for Jury Trial; aty Brent Robinson for Jefferson Enterprises, LLC Dustin Morrison and Sonya Kidd aka Sonya Morrison Peter D. McDermott
	NOTC	DCANO	Notice of Service of Jefferson Enterprises, LLC, Dustin Morrison and Sonya Morrison's First Set of Interrogatories and Request for Production of Documents to Plaintiff. Brent T. Robinson, Attorney for Dfdts. Robert C Naftz
12/18/2008	NOTC	CAMILLE	Notice of service - Plntfs first Set of Interrog and REq for Production of Documents to Defs Jefferson Enterprises, LIC Dustin Morrison and Sonya Kidd aka Morrison : aty Brian Tucker for Bank of Commerce Peter D. McDermott
2/9/2009		DCANO	Plaintiff's Exhibit List; Brian T. Tucker, Atty for Bank of Commerce. Peter D. McDermott
		DCANO	Plaintiff's witness List; Brian T. Tucker, Atty for Bank of commerce. Peter D. McDermott
2/26/2009		CAMILLE	Ex Parte Motion to set aside the Order setting the Matter for Trial and Deadlines and Requesting that this matter be set for a Telephonic Status Conference; aty Brent Robinson for Jefferson Enterprises, LLC Dustin Morrison and Sonya Kidd aka sonya Morrison Peter D. McDermott
		CAMILLE	Ex Parte Order setting aside the ORder setting the Matter for Trial and Deadlines and to set Telephonic Status Conference; aty Brent Robinson : J Mcdermott 2-19-09 Peter D. McDermott
	ORDR	CAMILLE	Order; this matter is set for Status Conference on 3-16-09 at 1:15 pm: J Mcdermott 2-25-09 Peter D. McDermott
3/6/2009		CAMILLE	Notice of service of Jefferson Enterprises, LLC Dustin Morrison and Sonya Morrisons Responses to Plaintiffs First set fo Interrog. and Req for Production of Documents; aty Brent Robinson for Jefferson Enterprises Dustin Morrison and Sonya Kidd Peter D. McDermott
3/24/2009	ORDR	CAMILLE	Order; this matter is reset for Jury Trial on 1-12-2010 @ 9am: Peter D. McDermott
	HRSC	CAMILLE	Hearing Scheduled (Jury Trial 01/12/2010 09:00 AM) Peter D. McDermott
3/4/2009		CAMILLE	Notice of Bankruptcy Peter D. McDermott
	INAC	CAMILLE	Inactive Peter D. McDermott
3/18/2009		CAMILLE	Order ; all further proceedings in this case are STAYED and the Jury Trial on 1-12-10, is VACATED: J Mcdermott 8-14-09 Peter D. McDermott

The Bank Of Commerce vs. Jefferson Enterprises LLC, Dustin Morrison, Sonya Morrison, City of Pocatello

Date	Code	User		Judge
10/20/2009		CAMILLE	Motion to Place Matter Back on Trial Calendar; aty Brian Tucker	Robert C Naftz
11/20/2009	HRSC	NICOLE	Hearing Scheduled (Status Conference 12/21/2009 01:30 PM)	Robert C Naftz
		CAMILLE	Order for Status conference; s/ Judge Naftz 11-20-10	Robert C Naftz
12/1/2009		CAMILLE	Request to participate in hearing by telephone; aty Brent Robinson for Jefferson enterprises	Robert C Naftz
12/2/2009		CAMILLE	Notice of intent to appear telephonically; aty Brian Tucker	Robert C Naftz
12/21/2009	DCHH	NICOLE	Hearing result for Status Conference held on 12/21/2009 01:30 PM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages Telephonic	Robert C Naftz
12/30/2009	HRSC	NICOLE	Hearing Scheduled (Status Conference 03/22/2010 01:30 PM)	Robert C Naftz
		CAMILLE	Minute Entry and Order; this matter is set another Status Conference: s/ Judge Naftz 12-30-2010	Robert C Naftz
3/26/2010	DCHH	NICOLE	Hearing result for Status Conference held on 03/22/2010 01:30 PM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages	Robert C Naftz
	HRSC	NICOLE	Hearing Scheduled (Status Conference 05/03/2010 02:00 PM)	Robert C Naftz
		CAMILLE	Minute Entry and Order; Mr. Morrisons bankruptcy action is moving forward, all parties will be discussing a settlement : s/ Judge 3-26-2010	Robert C Naftz
5/11/2010	DCHH	NICOLE	Hearing result for Status Conference held on 05/03/2010 02:00 PM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages	Robert C Naftz
	HRSC	NICOLE	Hearing Scheduled (Status Conference 07/06/2010 01:30 PM)	Robert C Naftz
		CAMILLE	Minute Entry and Order; Mr. Robinson represented to the court that the Morrisons bankruptcy action is closer to being finalized and jointly recommended another status conference be scheduled: s/ Judge Naftz 5-11-2010	Robert C Naftz
7/16/2010	DCHH	NICOLE	Hearing result for Status Conference held on 07/06/2010 01:30 PM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages	Robert C Naftz

The Bank Of Commerce vs. Jefferson Enterprises LLC, Dustin Morrison, Sonya Morrison, City of Pocatello

Date	Code	User		Judge
7/16/2010	HRSC	NICOLE	Hearing Scheduled (Status Conference 08/30/2010 02:00 PM)	Robert C Naftz
7/20/2010		CAMILLE	Minute Entry and Order; Status Conference is scheduled in this matter for 8-30-2010 @ 2pm: s/ Judge Naftz 7-18-2010	Robert C Naftz
9/10/2010	DCHH	NICOLE	Hearing result for Status Conference held on 08/30/2010 02:00 PM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages	Robert C Naftz
	HRSC	NICOLE	Hearing Scheduled (Status Conference 10/18/2010 01:30 PM)	Robert C Naftz
		CAMILLE	Order setting Status Conference; s/ Judge Naftz	Robert C Naftz
10/18/2010	INHD	BRANDY	Hearing result for Status Conference held on 10/18/2010 01:30 PM: Interim Hearing Held	Robert C Naftz
10/22/2010	HRSC	NICOLE	Hearing Scheduled (Status Conference 11/29/2010 01:30 PM)	Robert C Naftz
10/26/2010		CAMILLE	Order setting another Status Conference; s/ Judge Naftz	Robert C Naftz
12/9/2010	DCHH	NICOLE	Hearing result for Status Conference held on 11/29/2010 01:30 PM: District Court Hearing Held Court Reporter: no court reporter Number of Transcript Pages for this hearing estimated: telephonic	Robert C Naftz
	HRSC	NICOLE	Hearing Scheduled (Status Conference 12/20/2010 03:30 PM) telephonic	Robert C Naftz
12/10/2010		CAMILLE	Notice of Appearance on Behalf of Jefferson Enterprises, LLC; aty Bruce Larson for def	Robert C Naftz
	ATTR	NICOLE	Defendant: Jefferson Enterprises LLC Attorney Retained A Bruce Larson	Robert C Naftz
		CAMILLE	Minute Entry and Order; Status conference is scheduled for 12-20-10	Robert C Naftz
12/29/2010	DCHH	NICOLE	Hearing result for Status Conference held on 12/20/2010 03:30 PM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages telephonic (Robinson)	Robert C Naftz
	HRSC	NICOLE	Hearing Scheduled (Jury Trial 11/29/2011 09:00 AM) First week of first setting	Robert C Naftz
	HRSC	NICOLE	Hearing Scheduled (Jury Trial 12/06/2011 09:00 AM) Second week of first setting	Robert C Naftz
	HRSC	NICOLE	Hearing Scheduled (Jury Trial 01/31/2012 09:00 AM) First week of backup setting	Robert C Naftz
	HRSC	NICOLE	Hearing Scheduled (Jury Trial 02/07/2012 09:00 AM) Second week of backup setting	Robert C Naftz

The Bank Of Commerce vs. Jefferson Enterprises LLC, Dustin Morrison, Sonya Morrison, City of Pocatello

Date	Code	User	Judge
12/30/2010		CAMILLE	Minute Entry and Order; this matter be set for trial pending the filing of other motions and completion of discovery; court will not order the parties to participate in mediation but highly recommends they consider mediation as an option for resolving the issues in this case: s/ Judge Naftz 12-29-2010
		CAMILLE	Scheduling Order, Notice of Trial Setting and initial pretrial order; s/ Judge Naftz 12-29-2010
1/26/2011	HRSC	NICOLE	Hearing Scheduled (Motion 02/22/2011 01:30 PM) Motion for Leave to Amended Answer to Amended Complaint to Foreclose Real Estate Mortgage and to Amended Counterclaim
		CAMILLE	Motion for leave to Amended Answer to Amended complaint to foreclosure real estate mortgage and to amended cunterclaim; aty Bruce Larson
2/22/2011		CAMILLE	Amended Answer to Amended complaint to foreclose real estate mortgage, Amended counterclaim and demand for Jury Trial; aty Bruce Larson
3/11/2011	DCHH	NICOLE	Hearing result for Motion held on 02/22/2011 01:30 PM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages Motion for Leave to Amended Answer to Amended Complaint to Foreclose Real Estate Mortgage and to Amended Counterclaim
		CAMILLE	Minute Entry and Order; (order on Defs Motin for leave to Amended Answer, amended counterclaim was GRANTED) crt encourages parties to participate in mediation: s/ Judge Naftz 3-11-2011
3/28/2011		CAMILLE	Notice of service of discovery; Requests for admission, interrog. and requests for production of documents on the plntf/counterdefendant Bank of Comerce; aty Bruce Larson
4/28/2011		CAMILLE	Notice of service - The Bank of Commerce's Response to Jefferson Enterprises, LLC requests for admissions: aty Brian Tucker
5/3/2011		CAMILLE	Notice of service - The Bank of Commerces Response to Jefferson Enterprises, LLC's Interrog and requests for production of documents: aty Brian Tucker
7/8/2011		CAMILLE	Notice of Deposition of the Bank of Commerce on 7-25-2011 @ 1pm:
		CAMILLE	Notice of Deposition of Steve Worton; on 7-26-2011 @ 9am:
9/16/2011		CAMILLE	Motion to vacate first Trial setting; aty Bruce Larson

The Bank Of Commerce vs. Jefferson Enterprises LLC, Dustin Morrison, Sonya Morrison, City of Pocatello

Date	Code	User		Judge
9/20/2011		CAMILLE	Response to Motion to vacate first Trial setting; aty Brent Robinson for def /counterclaimants	Robert C Naftz
10/28/2011		CAMILLE	Notice of taking deposition of Dustin Morrison; on 11-4-2011 @ 9:30 : aty Brian Tucker	Robert C Naftz
		CAMILLE	Notice of taking deposition of Sonya Morrison on 11-4-2011 @ 1pm: aty Brian Tucker	Robert C Naftz
11/7/2011	HRVC	NICOLE	Hearing result for Jury Trial scheduled on 11/29/2011 09:00 AM: Hearing Vacated First week of first setting per motion	Robert C Naftz
	HRVC	NICOLE	Hearing result for Jury Trial scheduled on 12/06/2011 09:00 AM: Hearing Vacated Second week of first setting; per motion and order signed by the court	Robert C Naftz
		CAMILLE	Order to vacate first Trial setting; s/ Judge Naftz 11-5-2011	Robert C Naftz
11/14/2011	HRSC	NICOLE	Hearing Scheduled (Motion for Summary Judgment 12/12/2011 02:30 PM) Plaintiff's	Robert C Naftz
		CAMILLE	Memorandum in support of motion for summary judgment; aty Brian Tucker for Bank of Commerce	Robert C Naftz
		CAMILLE	Affidavit of Thomas J Romrell; aty Brian Tucker for The Bank of Commerce	Robert C Naftz
		CAMILLE	Affidavit of Steve Worton; aty Brian Tucker for Bank of Commerce	Robert C Naftz
		CAMILLE	Affidavit of A Michael Morrison; aty Brian Tucker for The Bank of Commerce	Robert C Naftz
		CAMILLE	Affidavit of Brian Tucker; aty Brian Tucker for The Bank of Commerce	Robert C Naftz
		CAMILLE	Motion for Summary Judgment; aty BrianTucker for The Bank of Commerce	Robert C Naftz
11/15/2011	NOTC	BRANDY	Notice of hearing; aty for pltf; Motion for Summary Judgment 12-12-11 at 2:30	Robert C Naftz
11/16/2011	CONT	NICOLE	Continued (Motion for Summary Judgment 12/19/2011 02:30 PM) Plaintiff's motion; conflict with the Court's calendar	Robert C Naftz
11/18/2011	ORDR	NICOLE	Order Continuing Hearing on Motion for Summary Judgment; pursuant to conflict with the Court's calendar, Plaintiff's/Counterdefendant's Motion for Summary Judgment will be continued to 12-19-11 at 2:30 pm; s/ J. Naftz 11-18-11	Robert C Naftz
		CAMILLE	Expert witness disclosures; aty Bruce larson	Robert C Naftz
		CAMILLE	Fact witness disclosure; aty Bruce Larson for Jefferson enterprises LLC	Robert C Naftz
11/21/2011		CAMILLE	Notice of service - Plntfs second set of interrog and requests for production of documents to def Jefferson enterprises, LLC: aty Brian Tucker	Robert C Naftz

The Bank Of Commerce vs. Jefferson Enterprises LLC, Dustin Morrison, Sonya Morrison, City of Pocatello

Date	Code	User	Judge
11/21/2011		CAMILLE	Objection to late expert witness disclosure; aty Brian Tucker Robert C Naftz
12/5/2011	MEMO	NICOLE	Memorandum in Opposition to Plaintiff's Motion for Summary Judgment filed by A. Bruce Larson for Jefferson Enterprises, LLC Robert C Naftz
	AFFD	NICOLE	Affidavit of Eric R. Polatis filed by A. Bruce Larson Robert C Naftz
	AFFD	NICOLE	Affidavit of A. Bruce Larson filed by A. Bruce Larson Robert C Naftz
12/13/2011		CAMILLE	Reply Memorandum in support of motion for summary judgment; aty Brian Tucker for Bank of Commerce Robert C Naftz
12/21/2011		CAMILLE	Expert witness disclosure; aty Brian Tucker Robert C Naftz
12/30/2011	DCHH	NICOLE	Hearing result for Motion for Summary Judgment scheduled on 12/19/2011 02:30 PM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages Plaintiff's motion Robert C Naftz
	ADVS	NICOLE	Case Taken Under Advisement 12-19-11 Robert C Naftz
		CAMILLE	Motion to vacate Trial setting; aty Bruce Larson Robert C Naftz
1/4/2012	HRSC	NICOLE	Hearing Scheduled (Motion 01/09/2012 03:30 PM) Motion to Vacate Trial Setting Robert C Naftz
	MEOR	NICOLE	Minute Entry and Order; parties came before the court on 12-19-11 for Plaintiff's Motion for Summary Judgment; the court heard argument from counsel and considered all documents in support of and in opposition to Plaintiff's motion; the Court will take Plaintiff's Motion for Summary Judgment under advisement and enter a written decision; the court will further address Plaintiff's Objection to Late Expert Witness Disclosure in its written decision as to Defendant's, Jefferson Enterprises' timeliness for disclosure of expert witnesses as it relates to the Scheduling Order previously issued in this matter; s/ J. Naftz 12-31-11 Robert C Naftz
1/6/2012		CAMILLE	Notice of hearing on motion to vacate trial setting; aty Bruce Larson Robert C Naftz
1/11/2012	STIP	NICOLE	Stipulation to Vacate First Trial Setting and Amend Pretrial Order filed by A. Bruce Larson Robert C Naftz

The Bank Of Commerce vs. Jefferson Enterprises LLC, Dustin Morrison, Sonya Morrison, City of Pocatello

Date	Code	User	Judge
1/17/2012	MEMO	NICOLE	Memorandum Decision and Order; summary judgment in favor of Plaintiff must be entered; statute of frauds prevents Jefferson from prevailing on issue of breach of contract; no sufficient facts to create material issue of facts regarding claim of interference with prospective economic advantage; no evidence submitted by Jefferson as to claim of fraudulent misrepresentation; Jefferson's claim regarding promissory estoppel does not raise material issue of fact; the court dismisses Defendant's, Jefferson's, amended counterclaims with prejudice; Jefferson did not present any evidence or objection to bank's request to foreclose on the mortgages; bank is entitled to foreclose on both mortgages, sell the property and apply the proceeds of any sale to the outstanding debts owed by Jefferson; s/ J. Naftz 1-17-12
	JDMT	NICOLE	Judgment; pursuant to memorandum decision and order, this court dismissed Jefferson Enterprises' Amended Counterclaim in its entirety finding that the Bank of Commerce was entitled to Summary Judgment; Plaintiffs were entitled to foreclose upon the two mortgages it held, sell the property and apply the proceeds of the sale to any debt owed by Jefferson; Plaintiffs have the highest priority with regard to the two mortgaged properties that are a part of this lawsuit; each party shall pay their respective attorney fees and court costs; s/ J. Naftz 1-17-12
1/18/2012	DCHH	NICOLE	Hearing result for Motion scheduled on 01/09/2012 03:30 PM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages Motion to Vacate Trial Setting
	CONT	NICOLE	Continued (Jury Trial 04/24/2012 09:00 AM) First Week of Trial Setting
	CONT	NICOLE	Continued (Jury Trial 05/01/2012 09:00 AM) First Week of Trial Setting

The Bank Of Commerce vs. Jefferson Enterprises LLC, Dustin Morrison, Sonya Morrison, City of Pocatello

Date	Code	User	Judge
1/18/2012	MEOR	NICOLE	Minute Entry and Order; parties came before court on 1-9-12 for hearing on Jefferson Enterprises' Motion to Vacate Trial Setting; parties appeared telephonically; the court heard argument from counsel and received no objection as to allowing a continuance of the trial pending the Court's decision on Plaintiff's Motion for Summary Judgment and for additional discovery and deposition to be taken; it is ordered that Defendant's motion is granted; Jury Trial currently scheduled to begin 1-31-12 is vacated and continued until 4-24-12 at 9:00 am through 4-27-12 and again on 5-1-12; any and all deadlines as outlined in the Court's previous Scheduling Order now pertain to the new trial date of April 24, 2012; s/ J. Naftz 1-18-12
1/30/2012	AFFD	DCANO	Affidavit of Brian T. Tucker in Support of Motion for Award of Attorney's Fees and Costs. Brian T. Tucker, Attorney for Plntfs.
	MEMO	DCANO	Memorandum in Support of Motion for Award of Attorney's Fees and Costs. Brian T. Tucker, Atty. for Plntfs.
1/31/2012		CAMILLE	Motion to reconsider, vacate summary judgment and in the alternative to alter or amend judgment; aty Bruce Larson
		CAMILLE	Memorandum in support of motin to reconsider, vacate summay judgment, and in the alternative to alter or amend judgment; aty Bruce Larson
2/13/2012		CAMILLE	Objection to award of costs and attorney fees: aty Bruce Larson
2/22/2012	HRSC	NICOLE	Hearing Scheduled (Motion 03/19/2012 01:30 PM) Motion for Award of Attorney's Fees
2/23/2012	HRSC	NICOLE	Hearing Scheduled (Motion 03/19/2012 01:30 PM) Motion to Reconsider, Vacate Summary Judgment and in the Alternative to alter or Amend Judgment
2/27/2012		CAMILLE	Notice of hearing; set for 3-19-2012 @ 1:30 pm:
3/12/2012		CAMILLE	Objection to motion to reconsider; aty Brian Tucker for plntf
4/19/2012	DCHH	NICOLE	Hearing result for Motion scheduled on 03/19/2012 01:30 PM: District Court Hearing Hek Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages; Motion for Award of Attorney's Fees; court took under advisement

The Bank Of Commerce vs. Jefferson Enterprises LLC, Dustin Morrison, Sonya Morrison, City of Pocatello

Date	Code	User	Judge
4/19/2012	DCHH	NICOLE	Hearing result for Motion scheduled on 03/19/2012 01:30 PM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages Motion to Reconsider, Vacate Summary Judgment and in the Alternative to alter or Amend Judgment; court took under advisement
		CAMILLE	Memorandum Decision and Order on Attorney fees and costs; Plaintiff Bank of Commerce is entitled to a total judgment in the amount of \$54,898.76: s/ Judge Naftz
		CAMILLE	Memorandum Decision and Order on motion to reconsider; (Court DENIES Def/Counterclaimants Motion to reconsider, Vacate Summary Judgment and in the Alternative to Alter or Amend Judgment) s/ Judge Naftz 4-18-2012
		CAMILLE	Decree of Foreclosure and Order of Sale; s/ Judge Naftz 4-19-2012
	JDMT	CAMILLE	Judgment RE: Attorney fees and costs; Plaintiff be awarded and recover from Defendant, Jefferson Enterprises, LLC the total amount of \$54,898.76: s/ Judge Naftz 4-19-2012
	CSTS	CAMILLE	Case Status Changed: Closed
4/26/2012	HRVC	NICOLE	Hearing result for Jury Trial scheduled on 04/24/2012 09:00 AM: Hearing Vacated First Week of Trial Setting; Plaintiff has no further action in this matter
	HRVC	NICOLE	Hearing result for Jury Trial scheduled on 05/01/2012 09:00 AM: Hearing Vacated Second Week of Trial Setting; Plaintiff has no remaining issues in this matter
5/31/2012		DCANO	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: A. Bruce Larson Receipt number: 0020187 Dated: 5/31/2012 Amount: \$101.00 (Check) For: Jefferson Enterprises LLC (defendant)
	APSC	DCANO	Appealed To The Supreme Court
	MISC	DCANO	Received Check # 6149 in the amount of \$100.00 for deposit of Clerk's Record.
3/7/2012	MISC	DCANO	CLERK'S CERTIFICATE OF APPEAL: Signed and Mailed to Supreme Court on 6-7-12. (Received file from Dist. Court on 6-6-12.)
3/12/2012	MISC	DCANO	IDAHO SUPREME COURT; Received Notice of Appeal on 6-8-12. Docket Number #40034-2012. Clerk's Record must be filed with SC on 8-14-12. (7-10-12 5 weeks prior)

Date: 7/19/2012

Sixth Judicial District Court - Bannock County

User: DCANO

Time: 03:28 PM

ROA Report

Page 11 of 11

Case: CV-2008-0004231-OC Current Judge: Robert C Naftz

The Bank Of Commerce vs. Jefferson Enterprises LLC, etal.

The Bank Of Commerce vs. Jefferson Enterprises LLC, Dustin Morrison, Sonya Morrison, City of Pocatello

Date	Code	User	Judge
6/12/2012	MISC	DCANO	IDAHO SUPREME COURT: Received Clerk's Cert. on 6-8-12. Carefully examine the title and Cert. and advise the Dist. Clerk of any corrections. The Title in the Cert. must appear on all documents filed in SC. Robert C Naftz
6/13/2012	MISC	DCANO	REQUEST FOR ADDITIONAL CLERK'S RECORD: Brian T. Tucker, Attorney for Bank of Commerce. Robert C Naftz
7/3/2012		CAMILLE	Affidavit of amount due; under IRCP noo 69: aty Robert C Naftz Brian Tucker for plntf
7/6/2012	WRIT	CAMILLE	Writ Issued and mailed back to counsel Robert C Naftz
7/16/2012		CAMILLE	Miscellaneous Payment: Writs Of Execution Paid Robert C Naftz by: Nelson Hall Parry Tucker Receipt number: 0025671 Dated: 7/16/2012 Amount: \$2.00 (Check)
7/19/2012	MISC	DCANO	CLERK'S RECORD received in Court Records on Robert C Naftz 7-19-12.

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2011 DEC -5 PM 3:36
BY *[Signature]*
DEPUTY CLERK

Attorneys for Jefferson Enterprises, LLC, an Idaho limited liability company.

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

THE BANK OF COMMERCE, an Idaho)	
banking corporation,)	
)	
Plaintiff, Counterdefendant,)	
)	Case No. CV 08-4231 OC
vs.)	
)	MEMORANDUM IN OPPOSITION TO
JEFFERSON ENTERPRISES, LLC, an Idaho)	PLAINTIFF'S MOTION FOR SUMMARY
limited liability company, DUSTIN)	JUDGMENT
MORRISON and SONYA KIDD aka SONYA)	
MORRISON,)	
)	
Defendants, Counterclaimants,)	
)	
)	
THE CITY OF POCA TELLO, an Idaho)	
municipality,)	
)	
Defendant.)	
)	

I. Factual Background

Dustin Morrison is the owner and managing member of Jefferson Enterprises, LLC, (hereinafter "Jefferson"). Dustin Morrison¹ is also the owner and managing member of American Dream Home Builders, LLC, an Idaho Limited Liability Company n/k/a ADHD, LLC. The LLC is in the business of developing residential subdivisions and constructing residential homes.

¹ Dustin Morrison and Sonya Morrison were married at the time of the loan transaction but were divorced in September of 2011. Dustin Morrison was awarded all of the business assets and liabilities of the parties including the parties' interest in Jefferson Enterprises and other related business entities.

Dustin Morrison is also the sole shareholder and officer of American Dream Construction, Inc. The corporation is in the business of developing residential subdivisions and constructing residential homes in conjunction with American Dream. Jefferson Enterprises and the other described entities are interrelated to the extent that their common financial ability to succeed is influenced by the ongoing projects, monetary reserves and credit worthiness of all of the entities.

In May of 2005, Jefferson became the sole owner and managing member of Southern Hills Development Co., LLC. Southern Hills was the owner of an option to purchase real property which is referred to as the "Wood" parcel. Southern Hills was also the owner of a substantial portion of the 80 Acres, Inc., a subdivision of the City of Pocatello Idaho (referred to as the "80 Acre" parcel). All of the rights, title and interest in Southern Hills and in the Wood and 80 Acre parcels were transferred to Jefferson.

The 80 Acre parcel was subject to a financing arrangement with exceptionally favorable terms and conditions. The terms of the financing included a very low interest rate that was capitalized into the note together with low annual payments. Jefferson assumed those favorable financial arrangements. According to Dustin Morrison "there was not one dollar incentive to pay that off one day early." (D Morrison Depo. pp. 28-29).

In the early part of 2006, Jefferson negotiated with the Bank of Commerce (hereinafter referred to as "Bank") through one of its Vice Presidents, Steve Worton, for the purpose of the obtaining financing to exercise the option and to purchase the Wood property. Prior to the negotiations with the Bank, a "Master Plan" for development of the Southern Hills Project combining the Wood parcel and the 80 Acre parcel had been submitted and approved by the City of Pocatello. At the time, the plan was the largest single development in southeastern Idaho. (D. Morrison Depo. p.25) At the time the loan was being negotiated with the Bank, an Annexation

Agreement was being negotiated between Jefferson and the City of Pocatello.² Among other things, the Annexation Agreement provided for utilities, sewer and the joint development of a water system that included at least two large water storage tanks. Compliance with the terms of the Master Plan and the Annexation Agreement obligated Jefferson to spend millions of dollars to comply and complete the development.

Jefferson and the related entities spent large sums of money for the 80 Acre property acquisition, engineering, surveying, preparation of plats and other actions necessary to obtain the Annexation Agreement and the approval of the City of Pocatello for the Southern Hills Master Plan.

A loan proposal was submitted by the Morrisons and Jefferson to the Bank for the purpose of funding the purchase of the Wood property. The deadline to exercise the option to purchase the property was May 10, 2006. The owner of the property was not willing to extend the option past the deadline. In the event the option was not exercised and the Wood property not purchased, Jefferson would not be able to develop the Southern Hills Project and the expenditures described above would be lost. Wood had extended the option on two other occasions but refused any further extensions. (D. Morrison Depo. pp. 32 -33)

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5 Q. Was that a problem getting that extended?

6 A. The last six months was. There was starting
7 to be quite a bit of interest because we had obviously
8 already taken this project public and he gave me every
9 bit of assurance that there wouldn't be another one.
10 And he reassured me of that when I asked him for another
11 one prior to the final closing. He said, no, there will
12 be no more extensions, we have got tentative offers on
13 this piece of land for more than I am selling it to you
14 for. If you don't close, I am moving forward.

² The Annexation Agreement was not reached until after the loan transaction forming the basis of this action was closed.

15 Q. You say the last time, whenever that was that
16 you got your last extension until May -- when was the
17 last extension?

18 A. I believe that it would have been October of
19 '05, right in the middle of the approval process with
20 the city. We started that whole public process I
21 believe in August of '05, so it was televised. So in
22 October I think we got a six-month extension.

23 Q. And that would taken you until -- what was
24 your drop dead date as far as you were concerned?

25 A. Well, it was April, the end of April, May,

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1 whenever it was, six months, you know.

2 Q. But the closing took place of the Wood
3 property, you closed on the Wood property, according to
4 the settlement documents, May 10 of 2006.

5 A. Yes, the drop dead date.

6 Q. That was your closing --

7 A. That was the date.

8 Q. Prior to that, in October of 2005 or whenever
9 it was that you obtained that next extension, that last
10 extension, you are saying at that point Mr. Wood told
11 you there would not be any other extensions?

12 A. Yes.

13 Q. So you knew then that this was your last
14 chance.

The loan proposal included volumes of documents relating to the Southern Hills Project together with tax returns, financial analysis, appraisals, and projected profits. Interestingly the Bank accepted the Jefferson documents and treated the same as the loan application. (Worton Depo p. 19):

2 Q. At the first meeting with Mr. Morrison, did
3 you treat his presentation and the documents that he
4 presented you as a loan application?

5 Yes.

6 Q. So once you had received that documentation
7 and treated it as a loan application, what next did you
8 do?

9 A. I took the tax returns, prepared them, put
10 them in a format that the bank requires for a loan
11 presentation. We pulled the credit report, we did the
12 preliminary title research. There was some work that

13 had to be done with the appraisal because the appraisal
14 was in D.L. Evans Bank's name, we talked to the
15 appraiser about the value of the property.

The application provided that the Bank's position would be subject to the 80 Acre mortgage. Some time prior to May 8, 2006, Steve Worton, on behalf of the Bank, informed Jefferson that the loan pertaining to the Southern Hills Project been approved by the Bank the only variance from the written request made by Jefferson was that the amount of the loan would be reduced to approximately \$2,200,000.00 and the term of the loan would be for one year. The Bank's communicated approval specifically recognized the written application made by Jefferson which provided among other things that the bank would have a second mortgage on the 80 Acre parcel. The acceptance of the application on the stated basis preserved the favorable financing arrangement enjoyed by Jefferson as well as leaving intact other liquid assets of Jefferson, the related entities and the Morrisons. The liquid assets were needed for the completion of the Southern Hills project and to fund other ongoing real estate developments of the other related entities. (Wake Depo. pp.23-24)

The Bank recognized the financial interrelationship of Jefferson to the other business entities of the Morrisons combining the financial information to determine debt to asset ratios, capacity and working capital. Based upon the written application, the Bank, through Steve Worton, acknowledged acceptance. Jefferson had a clear understanding that the new loan from the Bank would be subordinate to the existing 1st mortgage on the 80 Acre parcel. Jefferson accepted the modified terms and discontinued the pursuit of other financing options with DL Evans Bank. Following the communication of acceptance from the Bank and less than 48 hours prior to the time the option on the Wood parcel was to expire, the Bank changed its position and demanded that it be placed in a first lien position on the 80 Acre parcel. Jefferson was facing the prospect of catastrophic loss if the Wood option was not exercised. Jefferson was compelled by

the wrongful acts of the Bank at the last hour to use substantially all of its liquid assets and the liquid assets of the related entities to pay off the obligation on the 80 Acre parcel thereby placing the Bank's mortgage in a first lien position on the property.

The Bank admits that its actions impacted the financial ability of Jefferson and the other related businesses to continue their operations by consuming its liquid financial capacity to continue the project or obtain additional investment to complete the project. The Bank's procedures required that the financial ability of a borrower such as Jefferson be analyzed to determine if it would qualify for the loan. The Bank in its deposition explained the scope of the analysis. (M. Morrison Depo. pp.64-69). Jefferson's combined financial information met the lending criteria of the Bank based upon the assumption that the capacity and working capital would not be reduced. However, when the Bank demanded that Jefferson use its working capital to pay off the 80 Acre mortgage the financial ability of Jefferson to service the loan was compromised. Under these circumstances the Bank would not have approved the loan. (Worton Depo. p. 73.)

7 Q. And the board of directors in this short
8 period of time between their approval on the 9th and the
9 loan closing on the 10th had no opportunity to review
10 the loan itself to see if any of those numbers or
11 financials would have changed based on how the loan was
12 actually closed?

13 A. No.

14 Q. On the 9th had that working capital, if the
15 working capital amount was over \$700,000 less than what
16 was presented to the board, would you have recommended
17 the loan for approval?

18 A. No.

19 Q. And do you believe that the board would have
20 approved it with that change?

21 A. No.

(M. Morrison Depo. pp.95-96).

Q. Mr. Morrison's working capital was decreased

15 and his ratio, current ratio of assets to liability was
16 substantially impacted because of the payoff of the 80
17 Acre parcel; isn't that right?
18 A. Yes.
19 Q. Had that payoff occurred prior to the time
20 that the loan review committee saw the application,
21 would the loan have been approved under the policies of
22 the bank at that time?
23 A. I don't know.
24 Q. Would it have been a significant factor in the
25 approval or disapproval of the loan?

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1 A. Yes.
2 Q. No question that the use of working capital to
3 pay off the 80 Acres reduced that working capital
4 significantly?
5 A. Yes.
6 Q. And as we look through the documents to the
7 later date, it went from around \$900,000 to as little as
8 \$70,000.
9 A. Yes.
10 Q. The bank was aware that Jefferson Enterprises
11 was just one of the entities that Mr. Morrison owned and
12 operated?
13 A. Yes.
14 Q. And the other entities included a construction
15 company, a home building company, and each of those
16 depended on the same pool of working capital?
17 A. Yes.
18 Q. With the changes that were made in the
19 availability of working capital and the increases in his
20 ratios, the differences in the ratios, would that have
21 an impact on another lender as far as loaning money on
22 this project?
23 A. Could you restate that or repeat it?
24 Q. The decrease in working capital and the change
25 in the ratios that were significantly changed, would

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1 that have an impact on another lender loaning money to
2 Mr. Morrison or his entities to take care of this bridge
3 loan
4 A. It could, yes.

Jefferson's loss in liquidity capacity and working capital was caused by the Bank's
breach of the agreement to lend leaving the favorable 80 Acre financing in place with its

insistence on being in first position of 80 Acre parcel. The breach caused damages to Jefferson's credit worthiness and stifled Jefferson's ability to attract other investment in the property. (D. Morrison Depo. p. 77-78).

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21 Q. So if that is the case, you really were wiped
22 out by that change of condition, why did you close the
23 loan?

24 A. Because at the time it seemed like the best of
25 all evils, the best of the worst, maintain the equity,

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1 then go back into Bank of Commerce and re-establish some
2 kind of operating line of credit, utilizing this equity
3 of seven hundred and some thousand dollars that we had
4 just contributed to this project, this new unanticipated
5 equity. Something, something, anything.

6 But it really was a choice between losing the
7 equity in this project or losing the ability to make
8 this project a success after you do maintain the equity
9 in the project. In the hopes and the understanding that
10 the Bank of Commerce doesn't want to see it fail, they
11 will step up and facilitate whatever they have caused in
12 deficiency.

13 And the understanding wasn't a speculative
14 whim, it was extremely sound. You couldn't have
15 approved the project the way you funded the project. I
16 don't even think you could have legally done the project
17 the way you did the project because we had no money.

18 Q. Who couldn't have legally done it?

19 A. The bank. We had no capacity at that point to
20 debt service anything. We had no capacity at that point
21 to offer a partner anything of consequence.

As a further inducement Worton represented that the Bank would not let Jefferson fail and would provide a means to replace the loss of working capital and financial ability. (D. Morrison Depo. pp. 70-73).

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24 Q. And you realized that what you want and what a

25 lender may eventually approve are not always the same

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1 thing?

2 A. Absolutely. Two totally different issues.

3 One is I can't have my cash that's been spent

4 reimbursed. The other thing is that they have approved

5 this loan based on, No. 1, my income and my capacity to

6 earn. No. 2, my liquidity and ability to debt service

7 over time because we knew this project wouldn't generate

8 a dime based on these numbers that I provided the bank

9 as a break even point of year four or year seven. So it

10 was going to require debt service for a period of time.

11 Keep in mind the reimbursement wasn't to come

12 to my pocket, it was to go to a CD to debt service the

13 darn loan at Bank of Commerce. That's one issue, I can

14 live without that issue.

15 The problem was we have approved you based on

16 your capacity to earn and your capacity to debt service

17 this loan and now you fully acknowledge, Steve,

18 everybody acknowledges there is not an option for

19 subordination, guys. They are not going to just for

20 free give up first position, we have to pay this off if

21 we want first position. In order to pay that off we are

22 going to liquidate our working capital, which will

23 substantially affect our ability to earn because we are

24 a spec home construction company, \$700,000 borrows \$3

25 million; right? 20 percent, you know, so whatever, \$3.5

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1 million, I guess.

2 Q. But you continued to operate after that,

3 didn't you?

4 A. No, we suffered, we bled, desperately. So

5 when I told Steve this, you understand there is no way I

6 can maintain my business without my working capital.

7 That working capital will disappear if I do what you are

8 asking me to do. If I don't do what you are asking me

9 to do, I lose this project and every dime that I have

10 spent on this project to date. So I'm at a mitigation

11 point, crossroads right now.

12 Steve says there is no way the bank wants you

13 to fail, there is no way that the bank wants this to

14 fail, there is no way the bank wants this as an asset.

15 So do whatever you think is the right thing for you to

16 do, but if you do this, my hunch is that you will be
17 able to come back into this bank and they will consider
18 whatever your loss was.
19 So we did that, and we did come back into the
20 bank several months later with applications for
21 construction money to continue our operation in Stone
22 Creek Estates and were denied that. And we brought that
23 in at the encouragement of Steve.
24 So we moved forward understanding that it
25 would be the bank's effort to mitigate this impact of

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1 this new requirement on our business.
2 Q. And that's based on what you claim Steve
3 Worton told you?
4 A. He didn't say those words, but yes.

The representation by the Bank through Worton was made prior to the time the loan was to close and the time the Wood parcel was to be purchased. Worton induced Jefferson to follow this course of action by misrepresenting that the Bank would not let Jefferson fail and would provide additional financing. The Bank refused to provide any additional financing to Jefferson for the completion of the Southern Hills Project. As a result of the Bank's blatant deviation from its own policies and procedures and commonly recognized lending standards and other wrongful conduct, Jefferson lost the ability to take advantage of foreseeable prospective economic opportunities related to the 80 Acre parcel, the Southern Hills Project and other real estate developments.

II. Material Issues of Fact

1. Jefferson's loan request which was adopted by the Bank as its loan application clearly communicated that the very favorable terms and conditions of the 80 Acre financing would remain in a priority position and that the Bank would take a subordinate position.

2. Jefferson's loan proposal was in writing and provided specific information about the 80 Acre obligation. The Bank accepted the proposal without the condition of having a first mortgage on the 80 Acre parcel.

3. The Bank did not communicate orally or in writing prior to May 9, 2006 that it would require the 80 Acre loan to be subordinated to the Bank's mortgage. The option to purchase the Wood property would expire on May 10, 2006.

4. The Bank knew or should have known that the 80 Acre lender would not have had any reason to subordinate its mortgage to the Bank on new financing.

5. The Bank knew or should have known that by requiring the payoff of the 80 Acre parcel that Jefferson's financial capacity would be substantially decreased.

6. The Bank would not have approved the loan under circumstances that required Jefferson to expend a substantial portion of its working capital to close the loan.

7. Under the circumstances of this transaction, the Bank knew that if the Wood option was not timely exercised that Jefferson's ability to complete the Southern Hills development would be impossible.

III. Summary Judgment Standard

Summary judgment is proper “if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” I.R.C.P. 56(c). Movant has the burden of showing that no genuine issues of material fact exist. *Stoddart v. Pocatello Sch. Dist. No. 25*, 149 Idaho 679, 683, 239 P.3d 784, 788 (2010). This Court “liberally construe[s] the record in a light most favorable to the party opposing the motion, drawing all reasonable inferences in favor of that party.” When ruling on a motion for summary judgment disputed facts are to be construed liberally in favor of the non-moving party, and all reasonable inferences that

can be drawn from the record are to be drawn in favor of the non-moving party. Summary judgment is appropriate only if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact. When the record shows the existence of genuine and material issues of fact and the record contains conflicting inferences or if reasonable minds might reach different conclusions the moving party is not entitled to a judgment as a matter of law. *Fazzio v. Mason*, 150 Idaho 591, 249 P.3d 390 (Idaho, 2011). Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c). Disputed facts and reasonable inferences are construed in favor of the non-moving party. *Estate of Becker v. Callahan*, 140 Idaho 522, 525, 96 P.3d 623, 626 (2004).

The court is permitted to draw probable inferences from the uncontradicted evidence because it would serve as the trier of fact, it is not permitted to make conclusive findings with regard to issues upon which the parties submit conflicting evidence. See *Williams v. Computer Res., Inc.*, 123 Idaho 671, 673, 851 P.2d 967, 969 (1993) (holding that the trial court was not permitted to draw inferences regarding the parties' intent when the parties submitted conflicting evidence on the issue); *Ashby v. Hubbard*, 100 Idaho 67, 70, 593 P.2d 402, 405 (1979) (holding that a question involving the "intention expressed by the acts and statements of the parties" was a factual question for the jury); *Argyle v. Slemaker*, 107 Idaho 668, 670-71, 691 P.2d 1283, 1285-86 (Ct. App. 1984) (holding that findings based on conflicting evidence may only be made on summary judgment when "the evidence is entirely confined to a written record, there is no additional, in-court testimony to be obtained, and the trial judge alone will be responsible for choosing the evidentiary facts he deems most probable"). Nor is the court permitted to judge the credibility of the affiants. See *Baxter*, 135 Idaho at 172, 16 P.3d at 269 ("[I]t is not proper for the

trial judge to assess the credibility of an affiant at the summary judgment stage when credibility can be tested in court before the trier of fact."); *Argyle*, 107 Idaho at 670, 691 P.2d at 1285 (holding that even when the court will serve as trier of fact, credibility determinations "should not be made on summary judgment if credibility can be tested by testimony in court before the trier of fact").

[W]hen a party moves for summary judgment, the initial burden of establishing the absence of a genuine issue of material fact rests with that party. *Tingley v. Harrison*, 125 Idaho 86, 89, 867 P.2d 960, 963 (1994) ("The burden of proving the absence of a material fact rests at all times upon the moving party."); See also *Harris v. State, Dep't. of Health & Welfare*, 123 Idaho 295, 298, 847 P.2d 1156, 1159 (1992); *McCoy v. Lyons*, 120 Idaho 765, 769, 820 P.2d 360, 364 (1991); *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 517, 808 P.2d 851, 854 (1991). Thus, it follows that if the moving party fails to challenge an element of the nonmovant's case, the initial burden placed on the moving party has not been met and therefore does not shift to the nonmovant.

The admissibility of evidence contained in affidavits and depositions in support of or in opposition to a motion for summary judgment is a threshold question to be answered before applying the liberal construction and reasonable inferences rule to determine whether the evidence is sufficient to create a genuine issue for trial. *Gem State Ins. Co. v. Hutchison*,

IV. Argument.

1. Breach of Contract.

The Bank agreed to loan money to Jefferson in accordance with the terms and conditions of the Board's approval of Jefferson's loan application. The conditions of the loan agreement provided, among other things, that the Bank would be secured on the 80 Acre parcel in a second lien priority position subject to the existing advantageous financing on the parcel. Jefferson

accepted the agreement and the material terms, including the second priority position, became binding on the Bank. The agreement contained the implied covenant of good faith and fair dealing together with the requirements, established policies and procedures of the Bank and its Board and recognized commercial lending standards and practices. The implied covenant of good faith and fair dealing is "... implied by law in the parties' contract." *Idaho Power Co. v. Cogeneration, Inc.*, 134 Idaho 738, 750, 9 P.3d 1204, 1216 (2000). The covenant "arises only regarding terms agreed to by the parties ." *Taylor v. Browning*, 129 Idaho 483, 490, 927 P.2d 873, 880 (1996) (citing *Idaho First Nat'l. Bank v. Bliss Valley Foods*, 121 Idaho 266, 288, 824 P.2d 841, 863 (1991)). "The covenant requires that the parties perform, in good faith, the obligations imposed by their agreement". *Idaho Power Co.*, 134 Idaho 738, 750, 9 p.3d 1204, 1216. The determination of whether the covenant has been breached is an objective determination of whether the parties have acted in good faith in terms of enforcing the contractual provisions. *Wesco Autobody Supply, Inc. v. Ernest*, 149 Idaho 881, 243 P.3d 1069 (2010). The Bank breached the terms and conditions of the lending agreement by changing its position and requiring Jefferson to pay off the existing loan on the 80 Acre parcel. The change of position of the Bank was timed in such a manner that Jefferson was unable to seek alternate financing to exercise the option to purchase the Wood property. That based upon the documentation contained in the loan application, and other information provided to the Bank by Morrisons and Jefferson, it was reasonably foreseeable that the breach would cause damages to Jefferson.

The Bank uses the Statute of Frauds argument to shield itself from what it claims are oral agreements about the issue of priority. However, the statements of Steve Worton about the Bank's requirement of priority are in fact barred. The Bank did not provide a writing to Jefferson at any time prior to the day of the closing that informed Jefferson that the Bank would require the

subordination of the 80 Acre mortgage or that it would have to be in a first security position on the property.

2. Interference with a Prospective Economic Advantage.

The Bank, acting contrary to its established policies and procedures and recognized commercial lending standards, wrongfully breached the terms and conditions of the loan agreement based upon the acceptance of Jefferson's documentation. The change in the Bank's position, requiring Jefferson to use existing liquid cash reserves to place the Bank in a first position on the 80 Acre parcel, materially interfered with Jefferson's foreseeable prospective economic advantage stemming from the favorable existing financing on the property, the business opportunities of the related entities owned by the Morrisons and its ability to complete the Southern Hills project.

Interference with a prospective economic advantage can be demonstrated by showing (1) the existence of a valid economic expectancy, (2) knowledge of the expectancy on the part of the interferer, (3) intentional interference inducing termination of the expectancy, (4) the interference was wrongful by some measure beyond the fact of the interference itself, (5) resulting damage to the plaintiff whose expectancy has been disrupted. *Cantwell v. City of Boise*, 146 Idaho 127, at 138, 191 P.3d 205, at 216, *Idaho*.

Jefferson had "(1) the existence of a valid economic expectancy" with the favorable financial conditions of the 80 Acre financial agreement and the preservation of its financial capacity. The Bank had "(2) knowledge of the expectancy" in that, by its own calculations, it knew of the advantage enjoyed by Jefferson and knew that Jefferson's financial capacity would be negatively impacted by its actions to change its position on the loan just before it was to close. The Bank's intentional actions to require the 80 Acre parcel loan to be paid off with full knowledge of the consequences was "(3) intentional interference inducing termination of the

[economic] expectancy.” “(4) [T]he interference was wrongful by some measure beyond the fact of the interference itself” in that the Bank followed a course of action that crippled the financial capacity of Jefferson. Finally, the Bank’s actions in reducing Jefferson’s ability to service the Bank’s loan and either market or develop the Southern Hills project “(5) result[ed] in damage to [Jefferson] whose expectancy has been disrupted.” *Id.*

A party claiming intentional interference resulting in injury was wrongful, may offer proof that either “(1) the defendant had an improper objective or purpose to harm the plaintiff; or (2) the defendant used a wrongful means to cause injury to the prospective business relationship.” *Idaho First Nat’l Bank v. Bliss Valley Foods, Inc.*, 121 Idaho 266, 286, 824 P.2d 841, 861 (1991). However, an enforceable contract need not be shown to exist, just a valid economic expectancy. *Commercial Ventures, Inc. v. Rex M. & Lynn Lea Family Trust*, 145 Idaho 208, 217, 177 P.3d 955, 964 (2008). In *Highland Enters., Inc. v. Barker*, the Idaho Supreme Court stated that the proper standard for the “knowledge of the expectancy” element necessary to make a claim of intentional interference with a prospective economic advantage is not actual knowledge. 133 Idaho 330, 338, 986 P.2d 996, 1004 (1999). Instead, the knowledge element may be “satisfied by actual knowledge of the prospective [economic advantage] or by knowledge “of facts which would lead a reasonable person to believe that such interest exists.” ’ ” *Id.* at 338–39, 986 P.2d at 1004–05 (alteration and emphasis in the original) (quoting *Kutcher v. Zimmerman*, 87 Hawaii 394, 957 P.2d 1076, 1088 n. 16 (Haw.Ct.App.1998)). Intent may be demonstrated if it is shown that the actor desires to bring about the interference, or “knows that the interference is certain or substantially certain to occur as a result of his action.” *Id.* at 340, 986 P.2d at 1006 (quoting Restatement (Second) of Torts § 766 cmt. d (1977)). “Intent can be shown even if the interference is incidental to the actor’s intended purpose and desire ‘but known to him to be a necessary consequence of his action.’ ” *Id.* (quoting Restatement (Second) of

Torts § 766 cmt. j. (1977)). *Wesco Autobody Supply, Inc. v. Ernest*, 149 Idaho 881, 243 P.3d 1069 (2010). Based upon the facts and circumstances of this case, the Bank possessed knowledge that the success of the Southern Hills project depended upon the purchase of the Wood property and the ability of Jefferson and the other Morrison entities to financially succeed. The actions of the Bank intentionally, with full knowledge of the facts and contrary to its lending policies, caused the abrupt and devastating loss of financial viability to Jefferson.

3. Fraud and Misrepresentation.

The disputed material issues of fact in this case show that the Bank and its authorized representatives owed a duty to Jefferson to speak the whole truth and to not intentionally mislead them or conceal material facts in communications regarding the terms and conditions of the loan or the Bank's ability and intention to further finance the Southern Hills project. The Bank and its officers made the materially false representation that the Bank had agreed to accept a second lien position on the 80 Acre parcel allowing Jefferson to profit benefit from the existing favorable financing arrangement and to preserve its ability to use its liquid assets. The Bank intentionally or negligently concealed the fact that it would or could change its position on the 80 Acre parcel until Jefferson was out of time to exercise the Wood option stating to Jefferson, to Pam Wake, the mortgage broker, and to others that the Board of Directors had approved the loan and agreed to accept the second priority position on the 80 Acre parcel. The Bank repudiated the agreement less than 48 hours prior to the loan closing and the expiration of the option to purchase the Wood property.

The Bank, as part of the loan application, had been provided comprehensive financial statements concerning Morrison, Jefferson and the other related entities. The liquid assets shown in the financial statements were necessary for the approval of the loan and critical to the ability of Jefferson to perform its obligations to the Bank. With full knowledge of Jefferson's financial

position, the Bank acted to cause the removal the underlying liquid assets (used to pay off the prior lien holder on the 80 Acre parcel) and caused Jefferson and the other related parties to lose the ability to proceed with Southern Hills Development and other projects. The timing of the change of position prevented Jefferson from seeking other financing to fund the purchase of the Wood property. Steve Worton had represented that the liquid cash available to Jefferson would remain intact and not be affected by the new loan. After the Bank's sudden change in position, Steve Worton represented that the Bank would provide additional financing to alleviate the financial burden caused by its last minute change in position which required Jefferson to practically exhaust its reserve of liquid assets. Based upon the Bank's representation through its officer and Vice President, Jefferson materially changed its position and used the liquid cash assets of Morrison and the related entities to pay off the first lien holder on the 80 Acre parcel.

The Bank subsequently refused to provide financing to alleviate Jefferson's loss of working capital caused by the Bank's change of position just prior to the closing of the loan. All of the representations, acts of concealment and other acts of wrongful conduct were made by authorized representatives of the Bank, including but not limited to Steve Worton, with the intent or the reasonable expectation that Jefferson would rely thereon. In fact, Jefferson did rely upon such false information to its damage, loss and detriment. The Bank, its officers and its Board, based upon the above allegations, lacked reasonable grounds to believe that the representations to Jefferson and the facts it concealed contained true and accurate information and therefore acted with reckless disregard for Jefferson's rights knowing with reasonable probability that Jefferson and its related entities would be financially crippled by the Bank's actions.

4. Promissory Estoppel.

In order to demonstrate promissory estoppel, three elements must be met: "(1) the detriment suffered in reliance was substantial in an economic sense; (2) substantial loss to the

promisee acting in reliance was or should have been foreseeable by the promisor; and (3) the promisee must have acted reasonably in justifiable reliance on the promise as made.' *Brown v. City of Pocatello*, 148 Idaho 802, 229 P.3d 1164, (2010). Disputed material issues of fact in this case establish that Jefferson suffered a real economic detriment as a result the of Bank's actions. The facts clearly establish that the Bank knew that Jefferson would rely on the Bank's representations relating to the financing of the original loan and the representations made after its breach and change of position. Under the circumstances of this case and the facts presented, Jefferson's reliance was reasonable and justified.

4. Damages.

Jefferson suffered damages which were foreseeable and known to the Bank. Dustin Morrison testified about the nature of the damages in the following excerpt of his deposition:

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24 Q. And you realized that what you want and what a
25 lender may eventually approve are not always the same

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1 thing?

2 A. Absolutely. Two totally different issues.
3 One is I can't have my cash that's been spent
4 reimbursed. The other thing is that they have approved
5 this loan based on, No. 1, my income and my capacity to
6 earn. No. 2, my liquidity and ability to debt service
7 over time because we knew this project wouldn't generate
8 a dime based on these numbers that I provided the bank
9 as a break even point of year four or year seven. So it
10 was going to require debt service for a period of time.
11 Keep in mind the reimbursement wasn't to come
12 to my pocket, it was to go to a CD to debt service the
13 darn loan at Bank of Commerce. That's one issue, I can
14 live without that issue.

15 The problem was we have approved you based on
16 your capacity to earn and your capacity to debt service
17 this loan and now you fully acknowledge, Steve,
18 everybody acknowledges there is not an option for

19 subordination, guys. They are not going to just for
20 free give up first position, we have to pay this off if
21 we want first position. In order to pay that off we are
22 going to liquidate our working capital, which will
23 substantially affect our ability to earn because we are
24 a spec home construction company, \$700,000 borrows \$3
25 million; right? 20 percent, you know, so whatever, \$3.5

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1 million, I guess.

2 Q. But you continued to operate after that,
3 didn't you?

4 A. No, we suffered, we bled, desperately. So
5 when I told Steve this, you understand there is no way I
6 can maintain my business without my working capital.
7 That working capital will disappear if I do what you are
8 asking me to do. If I don't do what you are asking me
9 to do, I lose this project and every dime that I have
10 spent on this project to date.

Dustin Morrison may not have known the exact dollar amount of Jefferson's damages but it is clear that he adequately described the damages including the amount of money that would be lost because of the inability of Jefferson to service the debt to the Bank. The Bank's unlawful acts caused the loss.

5. Novation.

The making of a new contract does not necessarily abrogate a former contract unless it explicitly rescinds it, deals with the subject matter so comprehensively as to be complete in itself, or is so inconsistent with the first contract that the two cannot stand together. Moreover, when a subsequently executed agreement specifically references and relies on a former agreement, the two are to be interpreted together, if possible. *Opportunity, L.L.C. v. Ossewarde*, 136 Idaho 602, 38 P.3d 1258, (2002). To establish an accord and satisfaction the parties accepting a new or different obligation must do so knowingly and intentionally. *Heckman v. Boise Valley Livestock Comm'n Co.*, 92 Idaho 862, 452 P.2d 359 (1969); *Fairchild v. Mathews*,

91 Idaho 1, 415 P.2d 43 (1966); *Allan Steel Supply Co. v. Bradley*, 89 Idaho 29, 402 P.2d 394 (1943). *Harris v. Wildcat Corp.*, 97 Idaho 884, 556 P.2d 67, (1976). Issues of fact arising from the circumstances of this case raise the issue of whether or not the elements necessary to find novation are present from the execution of the subsequent mortgages. The agreements were entered into with the understanding that the financial loss to Jefferson would be alleviated by the future acts of the Bank. The modification from the original agreement to loan money to Jefferson was not intentionally waived but was conditioned on the Bank's representations.

Conclusion

Genuine disputed material issues of fact exist in this case to all of the elements that Jefferson has the burden of proving at the time of trial. Therefore, the Bank's Motion for Summary Judgment should be denied.

Dated this 5th day of December, 2006.

A handwritten signature in black ink, appearing to read 'A. Bruce Larson', written over a horizontal line.

A. Bruce Larson, Attorney for Jefferson
Enterprises, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of December, 2011, a true and correct copy of the within and foregoing Document was served upon:

Douglas R. Nelson, Esq.
Brian Tucker, Esq.
ANDERSON NELSON HALL SMITH, P.A.
P. O. Box 51630
Idaho Falls, Idaho 83405-1630

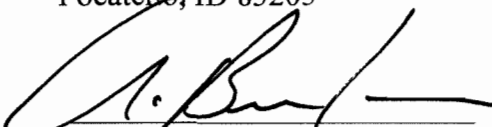
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A. Bruce Larson, Attorney for
Jefferson Enterprises, LLC

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BY MD
DEPUTY CLERK

Attorneys for Jefferson Enterprises, LLC, an Idaho limited liability company.

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

THE BANK OF COMMERCE, an Idaho
banking corporation,)

Plaintiff, Counterdefendant,)

vs.)

JEFFERSON ENTERPRISES, LLC, an Idaho)
limited liability company, DUSTIN)
MORRISON and SONYA KIDD aka SONYA)
MORRISON,)

Defendants, Counterclaimants,)

THE CITY OF POCA TELLO, an Idaho)
municipality,)

Defendant.)

Case No. CV 08-4231 OC

AFFIDAVIT OF A. BRUCE LARSON

State of Idaho)

County of Bannock)

A. Bruce Larson being first duly sworn upon oath deposes and states as follows:

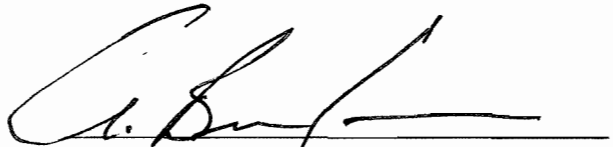
1. That he is the attorney for Jefferson Enterprises, LLC, in the above entitled action
and makes this affidavit upon his own knowledge.

2. That attached hereto as exhibit "A" is a true and correct copy of the 30(b)(6) deposition of the Bank of Commerce.

3. That attached hereto as exhibit "B" through "E" respectively are true and correct copies of the depositions of Steve Worton, Pamela K. Wake, Dustin Reed Morrison and Sonya J. Morrison.

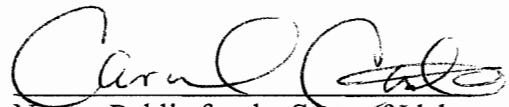
4. That attached hereto as exhibit "F" through "H" are true and correct copies of selected excerpts of the exhibits to the 30(b)(6) deposition of the Bank of Commerce.

DATED this 5th day of December, 2011.



A. Bruce Larson

Subscribed and Sworn to by A. Bruce Larson before me the undersigned Notary Public on this 5th day of ~~November~~ December 2011.



Notary Public for the State of Idaho
Residing at: Pocatello, ID
Commission expires: 5/12/2016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of November, 2011, a true and correct copy of the within and foregoing Document was served upon:

Douglas R. Nelson, Esq.
Brian Tucker, Esq.
ANDERSON NELSON HALL SMITH, P.A.
P. O. Box 51630
Idaho Falls, Idaho 83405-1630

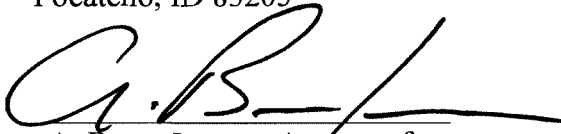
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A. Bruce Larson, Attorney for
Jefferson Enterprises, LLC

DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

THE BANK OF COMMERCE, an)
Idaho banking corporation,)
 Plaintiff,)

vs.) Case No.

JEFFERSON ENTERPRISES, LLC,) CV 08-4231 OC
an Idaho limited liability)
company, DUSTIN MORRISON)
and SONYA KIDD aka SONYA)
MORRISON, THE CITY OF)

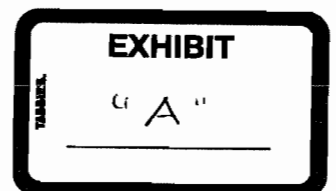
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RULE 30(b)(6) DEPOSITION OF THE BANK OF COMMERCE
TESTIMONY OF MIKE MORRISON

November 3, 2011

REPORTED BY:

PAUL D. BUCHANAN, RPR, RMR,
CSR No. 7, and Notary Public



Mike Morrison 11/3/2011

1 Pocatello, an Idaho)
2 municipality,)
3 Defendants.)
4 _____)
5 DUSTIN MORRISON and SONYA KIDD)
6 aka SONYA MORRISON, and)
7 JEFFERSON ENTERPRISES, LLC,)
8 an Idaho limited liability)
9 company,)
10 Counterclaimants,)
11 vs.)
12 THE BANK OF COMMERCE, an Idaho)
13 banking corporation,)
14 Counterdefendant.)
15 _____)
16
17
18
19
20
21
22
23
24
25

1 APPEARANCES:

2

3 For the Plaintiff:

4

BRIAN T. TUCKER

5

Nelson Hall Parry Tucker

6

Attorneys at Law

7

P. O. Box 51630

8

Idaho Falls, Idaho

9

10 For the Defendants Jefferson Enterprises, LLC, :

11

A. BRUCE LARSON

12

ABLE Law, PC

13

Attorney at Law

14

155 South Second

15

Pocatello, Idaho

16

17 Also Present:

18

Dustin Morrison

19

20

21

22

23

24

25

Mike Morrison 11/3/2011

I N D E X

1		
2	Examination By:	Page
3	Mr. Larson	5
4	Exhibits: (Exhibits retained by counsel)	
5	No. 1 - Appraisal of Real Property (not referred to)	
6	No. 2 - Blueprint and House Plans (not referred to)	
7	No. 3 - Complete Appraisal Summary Report	58
8	No. 4 - Loan Committee Packet	83
9	No. 5 - Loan Packet Information 1	88
10	No. 6 - Loan Packet Information 2	24
11	No. 7 - Loan Packet Information 3	33
12	No. 8 - Loan Packet Information 4 (not referred to)	
13	No. 9 - Loan Packet Information 5 (not referred to)	
14	No. 10 - Loan Packet Information 6 (not referred to)	
15	No. 11 - Loan Packet Information 7 (not referred to)	
16	No. 12 - Partnership Possibilities (not referred to)	
17	No. 13 - Southern Hills Projection (not referred to)	
18	No. 14 - Southern Hills Development (not referred to)	
19	No. 15 - Southern Hills MPD AS IS (not referred to)	
20	No. 16 - Southern Hills Covenant (not referred to)	
21	No. 17 - Amended Answers (not referred to)	
22	No. 18 - Bank of Commerce Responses to	16
23	Interrogatories	
24	No. 19 - Bank of Commerce Responses to Requests	21
25	for Admissions	

1 BE IT REMEMBERED that on November 3, 2011, at
2 the hour of 10:05 a.m. the deposition of MIKE MORRISON,
3 produced as a witness at the instance of the defendant
4 Jefferson Enterprises in the above-entitled action now
5 pending in the above-named court, was taken before Paul
6 D. Buchanan, CSR #7, and notary public, State of Idaho,
7 in the law offices of Nelson Hall Parry Tucker, 490
8 Memorial Drive, Idaho Falls, Bonneville County, Idaho.

9
10 WHEREUPON, the following proceedings were had:

11
12 MIKE MORRISON,
13 called at the instance of the defendant Jefferson
14 Enterprises, having been first duly sworn, was examined
15 and testified as follows:

16 EXAMINATION

17 BY MR. LARSON:

18 Q. Would you state your name, please?

19 A. Mike Morrison.

20 Q. What is your present business address?

21 A. Present business address, 3113 South 25th East
22 in Idaho Falls, Idaho.

23 Q. Have you had your deposition taken before, Mr.
24 Morrison?

25 A. No.

1 Q. You have been at depositions, though, haven't
2 you?

3 A. I have attended, yes.

4 Q. And you understand some of the simple ground
5 rules of taking a deposition, that you will wait until I
6 ask you the question and then give your answer, the
7 court reporter has to take it all down, so if we
8 overlap, he has a hard time doing that. You know, if
9 you have any problem with the question I ask, don't
10 understand it, whatever, it's fine to ask me to restate
11 it or tell me you don't understand what I am trying to
12 ask you.

13 We will try to get through it as quickly as we
14 can, but, as you know, there is a lot of documentation
15 we are going to have to talk about today, so we will try
16 and work through that.

17 You understand, I guess, that you are here as
18 the bank to testify on behalf of the bank.

19 A. Yes.

20 Q. And you received a copy of the notice of
21 deposition?

22 A. Yes.

23 Q. I am going to hand you a copy of that notice.
24 It's an unsigned copy and I just want you to refer to
25 the exhibit that's attached to the notice of deposition.

1 I had asked that the bank produce a number of documents
2 and in our discovery we received a number of documents
3 from the bank, and I have today with me hard copies of
4 what we received, it was transmitted to us on a disk.
5 So my first question is has the bank produced all of the
6 documents in their possession responsive to the request
7 in Schedule A?

8 A. I think with the CD, yes, there is a lot of
9 information, but yes.

10 Q. So that's all of the information the bank
11 would have on this transaction in its possession?

12 A. Yes.

13 Q. I noticed in going through these documents
14 there weren't any copies of e-mails or any other kind of
15 electronic information. Do you know whether or not
16 there are any e-mail files that exist, any electronic
17 files that exist in the bank that has anything to do
18 with this transaction?

19 A. There may be some between my attorney and I.

20 Q. I can't get attorney communications, but
21 within the bank, internal communications relating to
22 this transaction.

23 A. Not that I know of.

24 Q. Has there been anything done by the bank
25 officers to determine whether or not there are any of

1 these types of electronic records or e-mails or other
2 data that have been stored in relation to this
3 particular transaction?

4 A. I don't know the answer to that question.

5 Q. Who would know the answer to the question?

6 A. I would have to I guess ask our IT staff to
7 research if there were any e-mails from Mr. Worton at
8 that time, or with regards to the transaction back that
9 far.

10 Q. Does the bank itself have some type of
11 internal e-mail system?

12 A. Yes, we have -- not internal, it's just a
13 normal e-mail system, it's not an internal system.

14 Q. Is there anyone in charge of the storage of
15 electronic data in regard to transactions? I am sure
16 there are a lot of transactions like this, not like
17 banking accounts.

18 A. Just our normal IT department that manages our
19 e-mail accounts for us.

20 Q. Is there a name of any persons that are in
21 charge of that IT department?

22 A. Yes, Bryan Abegglen.

23 Q. Can you spell that last name?

24 A. I'll try. A-B-E-G-G-E-L-A-N (sic).

25 Q. In regard to your position with the bank, what

1 is your present position?

2 A. I am an executive vice president and credit
3 administrator for the bank.

4 Q. How long have you held that position?

5 A. Since the spring of 2008, April of 2008.

6 Q. Prior to April of 2008 where were you
7 employed?

8 A. I was with the Bank of Commerce.

9 Q. What were your duties prior to that?

10 A. I was a branch manager, loan officer; I was
11 special credits officer, assistant vice president. I
12 have worked for the bank for 14 years, so I have had
13 numerous titles and jobs.

14 Q. When did you start working for the bank; do
15 you recall?

16 A. October of 1997.

17 Q. Prior to October of 1997, were you employed in
18 any other places?

19 A. Yes.

20 Q. Where were you employed?

21 A. I worked with the U.S. Department of
22 Agriculture, Farm Service Agency, formerly Farmers Home
23 Administration, I started them in 1989 after I graduated
24 from college at Utah State University.

25 Q. So your work career has been involved with

1 credit, banking, that sort of thing?

2 A. Yes.

3 Q. Who is your immediate supervisor?

4 A. Tom Romrell, president and CEO of the bank.

5 Q. Do you have any responsibilities to report to
6 the board of directors?

7 A. Yes.

8 Q. And presently who are the acting board of
9 directors for the bank?

10 A. Presently?

11 Q. Presently.

12 A. Tom Romrell is a member of the board; Dick
13 Groberg is a number of the board; Julian Cowley is a
14 member of the board; Mic Bowen is a member of the board;
15 Calvin Erb is a member of the board; Newman Giles is a
16 member of the board. I hope I don't leave one out.

17 Q. Can I ask you if there is an officer named Ron
18 Crystal that has something to do with the board of
19 directors?

20 A. Ron Crystal is retired from the bank. He was
21 the credit administrator prior to me.

22 Q. When did he retire?

23 A. At the time I took over from him, so I think
24 the end of March, early April of 2008, in that general
25 time area.

1 Q. That's the position you now hold?

2 A. Correct.

3 Q. Do you attend the board meetings?

4 A. With regards to the executive loan meeting, I
5 do, and there are other board meetings I attend.

6 Q. Could you explain to me the difference between
7 the board of directors and the executive loan committee?

8 A. The board of directors, there are several
9 parts of their function within the bank, but the
10 executive loan committee, which makes the loan decisions
11 within the bank, is comprised of the board of directors,
12 the president of the bank, the credit administrator, the
13 CFO, which is chief financial officer, and then that's
14 the executive loan committee.

15 Q. Did you have any knowledge of this particular
16 transaction prior to the time that you started acting in
17 your present position in 2008?

18 A. Yes.

19 Q. What type of knowledge did you have of this
20 transaction?

21 A. I attended the board meeting, the loan meeting
22 when the loan was approved, had to have another credit
23 at that meeting, so I attended the meeting. And then we
24 have a review committee that reviews the loans prior to
25 submission to the board, and I looked at the credit and

1 reviewed it.

2 Q. In 2006 who would have been on that committee
3 when this was first reviewed?

4 A. Nolan Lee and myself looked at the loan, as
5 well as Tom Romrell and Ron Crystal.

6 Q. Would Steve Worton have been involved with
7 that particular committee at that time?

8 A. No.

9 Q. In preparation --

10 A. I should say we might have had a question to
11 ask the officer at that point; the way that committee
12 works loans are submitted for review prior to our
13 executive loan meeting, so those people review that loan
14 for content, things like that, and we may have a
15 question of the loan officer on that specific loan
16 package, so I mean Steve might have had some involvement
17 if we would have had a question.

18 Q. I'll come back to that in a little bit here.

19 A. Sure.

20 Q. If you could flip to Schedule B, the next page
21 of this notice of deposition. I just want to run
22 through these things and make sure. Are you prepared to
23 testify in regard to the commercial lending policies and
24 procedures of the bank?

25 A. Yes.

1 Q. And I suppose, and that's what I have been
2 getting at before, that these documents that were
3 produced through discovery are all of the documents that
4 were available to the bank in regard to this
5 transaction?

6 A. To the best of my knowledge, yes.

7 Q. And I suppose you reviewed through those
8 documents.

9 A. Yes, to the best of my ability.

10 Q. I realize they are voluminous. But as part of
11 your preparation for this deposition you have reviewed
12 those documents?

13 A. Yes.

14 Q. And I have talked to you about the electronic
15 documents. As far as you know, there aren't any
16 electronic documents that haven't been produced?

17 A. To the best of my knowledge, yes.

18 Q. All of the minutes and recordings of the board
19 of directors have been produced in regard to this
20 transaction?

21 A. Yes.

22 Q. And you are prepared to testify about those?

23 A. Yes.

24 Q. Are you prepared to testify to the formal
25 approval of the loan to Jefferson Enterprises with all

1 conditions?

2 A. Yes.

3 Q. And if you would review those other items
4 listed as 7 through 13, are there any of those items
5 that you have not prepared to testify to about today on
6 behalf of the bank?

7 A. I think we discussed in No. 13 the issue with
8 the e-mails. To my knowledge, we have given you
9 everything we have, but, yes, I am prepared to discuss
10 these items.

11 Q. In regard to the electronic data, you are just
12 not completely certain that there isn't something there
13 that hasn't been produced.

14 A. Correct.

15 Q. Are there any other persons who would have
16 more knowledge than you in regard to the items that we
17 are going to discuss today as disclosed in this notice
18 of deposition?

19 A. The only other person who may have some
20 knowledge would be Tom Romrell.

21 Q. He is the president, CEO of the bank?

22 A. Correct.

23 Q. And he held that position at the time this
24 loan was originated.

25 A. Correct.

1 Q. Would you explain to me when the bank first
2 became aware that there was a request for financing from
3 Jefferson Enterprises?

4 A. It was between May 1 -- somewhere around May
5 1, within a week of May 1, 2006.

6 Q. Is when the bank became aware of the request?

7 A. Well, I don't know when Mr. Worton became
8 aware of it.

9 Q. Well, let's try to break it down. So any part
10 of the transaction with Mr. Worton wasn't being
11 discussed with the bank prior to or around May 1 of
12 2006?

13 A. Not that I know of.

14 Q. And there is no record of that anywhere?

15 A. Well, as far as me knowing personally?

16 Q. Correct.

17 A. No, not that I'm aware of.

18 Q. And my question to follow that is based on
19 your review of the records, did the bank have any
20 knowledge prior to that time?

21 A. Yes, about -- in a meeting it was disclosed
22 with Mr. Worton and Mr. Morrison I think we discussed in
23 yesterday's deposition that there was a meeting and Mr.
24 Worton became aware of the request for financing. I
25 think that was April 21, somewhere around there.

1 Q. Are there any records that you have seen of
2 the bank's that would confirm that that meeting took
3 place?

4 A. The affidavit of Mr. Worton that says he had
5 the meeting.

6 Q. And where is that affidavit?

7 A. It's (indicating) --

8 MR. TUCKER: I think it's probably in the
9 discovery, interrogatories, that's what he is talking
10 about. It's listed there.

11 MR. LARSON: I haven't seen an affidavit.

12 Q. I'll hand you some of the documents and refer
13 you to what has a sticker on it that says Exhibit 18.
14 Is that what you are referring to as the affidavit?

15 MR. TUCKER: I think we do have an affidavit
16 from Steve. You have never seen an affidavit from Steve
17 Worton?

18 MR. LARSON: No. Let's go off the record.

19 (Discussion off the record.)

20 MR. LARSON: Back on the record.

21 Q. While we were off the record you mentioned
22 that you believe that it was contained in answer to
23 Interrogatory No. 5?

24 A. Yes.

25 Q. And that's the information that had been

1 provided by Mr. Worton?

2 A. Yes.

3 Q. Could you tell me who provided the answers for
4 these interrogatories?

5 A. I helped prepare the answers; my attorney
6 helped compile them.

7 Q. I note that on the copy I have and as produced
8 here, I can't find a verification page. Did any of the
9 officers of the bank verify the information that's
10 contained in these answers to interrogatories?

11 A. I don't know if I understand your question.

12 MR. TUCKER: I don't know that there is a
13 formal verification.

14 MR. LARSON: I couldn't find one.

15 Q. You have read through Interrogatory No. 5 and
16 the answer to Interrogatory No. 5 and here as the
17 officer of the bank, speaking on behalf of the bank
18 today, are the statements contained in that
19 interrogatory true and correct?

20 A.. To the best of my knowledge, yes.

21 Q. And your knowledge is based upon the affidavit
22 of Mr. Worton?

23 A. For Interrogatory No. 5?

24 Q. Yes.

25 A. Yes.

1 Q. And I don't know that that's a fair question.
2 Let me ask that again. Are there parts of that that are
3 not derived from the affidavit of Mr. Worton?

4 (Pause in proceedings.)

5 A. Yes, there are some parts here that are not
6 entirely compiled by or from Mr. Worton.

7 Q. I wonder if we could take just a break and get
8 that affidavit so we could figure out what is going on
9 here.

10 (Short recess.)

11 MR. LARSON: Back on the record.

12 Q. In the interim while your counsel has obtained
13 a copy of this affidavit, have you had a chance to
14 review through that answer to interrogatory further and
15 determine what information is derived from the
16 information provided by Mr. Worton and what information
17 is provided from some other source?

18 (Pause in proceeding.)

19 Q. Referring back to Answer to Interrogatory
20 No. 5, what portion of that answer is derived from the
21 affidavit of Steve Worton or information provided by Mr.
22 Worton?

23 A. It looks like it starts with the paragraph on
24 April 21, 2006, I think the second paragraph --

25 Q. And if you would look at the bottom of that

1 page there is a Bates stamped number, its says BOC 1405?

2 A. Correct.

3 Q. That's the page that you are referring to?

4 A. Yes.

5 Q. And that would be the last paragraph on that
6 page.

7 A. Yes. And that goes to the Page BOC 001408,
8 and it looks like his testimony or his affidavit ends
9 with about the fourth paragraph down that ends in other
10 projects.

11 Q. And from that point on do you know who
12 provided the information for the balance of the answer
13 to Interrogatory No. 5?

14 A. I did.

15 Q. Were there any other individuals that supplied
16 any of that information?

17 A. I had bank staff help me pull files and things
18 that I could work with, you know, the secretary got me a
19 file so I could review the file.

20 Q. Would it be fair to say that you are primarily
21 the person who provided information in answering these
22 interrogatories?

23 A. Yes.

24 Q. With I suppose the exception of this
25 information that we have identified as coming from Steve

1 Worton.

2 A. Yes.

3 Q. Maybe this will solve a lot of my problem here
4 real quickly. You helped in the preparation of all the
5 answers to the interrogatories?

6 A. Yes.

7 Q. Were there any other persons from the bank
8 that supplied information directly in the preparation of
9 these answers to interrogatories?

10 A. I prepared the information that's in here,
11 compiled from information within the bank, so it's fair
12 to say that -- or maybe I am misunderstanding your
13 question.

14 Q. I am just trying to get it all so I can just
15 make short of a lot of questions I might have. So you
16 assisted in the preparation of the answers to
17 interrogatories.

18 A. Yes.

19 Q. And those answers to interrogatories are true
20 and correct to the best of your knowledge and belief.

21 A. Yes.

22 Q. And that's the knowledge and belief of the
23 bank.

24 A. Yes.

25 Q. If you would go to the next exhibit, which is

1 No. 19, and that's the Bank of Commerce's response to
2 request for admissions. Were you also the person who
3 was supplying the information to respond to these
4 requests?

5 A. Yes.

6 Q. And, again, to the best of your knowledge and
7 belief are these responses to the requests for
8 admissions true and correct?

9 A. Yes.

10 Q. And the bank deems them to be true and
11 correct.

12 A. Yes.

13 Q. I would like to go back in time a little bit,
14 and I am glad that you told me that you were involved
15 with the bank and this loan sometime around the first of
16 May of 2006. Do you recall during that timeframe of
17 receiving any information from Mr. Worton that he had
18 compiled to present to the various committees for
19 approval of the loan?

20 A. Would you restate that real quickly for me.

21 Q. Did Mr. Worton provide any of the committees
22 with information on the request for the loan?

23 A. Yes.

24 Q. Did you have that in your possession on May 1?

25 A. I don't know.

1 Q. To the best of your recollection what did the
2 bank have in its possession, or at least the credit
3 approval committees have in their possession at the time
4 that you first became involved?

5 A. May 8. I know for sure we had a May 8. That
6 Steve had forwarded information for a request on May 8
7 for sure.

8 Q. So on May 8, that's two days before the loan
9 closed.

10 A. Yes.

11 Q. And was there additional information in the
12 possession of the bank prior to May 8 that you reviewed
13 or any of the committees reviewed that you were involved
14 with?

15 A. Prior to May 8, I don't know that answer, I
16 don't know.

17 Q. Who would know that answer?

18 A. Possibly Mr. Worton.

19 MR. TUCKER: Are you asking specifically about
20 the committees or any --

21 Q. I can't believe that all of this loan
22 information was thrown on the loan committee's desk on
23 May 8 and they approved a \$2.2 million loan in two days.
24 What I am trying to find out is what information had
25 been transmitted, and maybe I am not artfully enough

1 asking the question, to just get what information was
2 already in the queue, so to speak, before you got to
3 this May 8 meeting. With that explanation are you able
4 to answer the question any more specifically?

5 A. I know on May 8 the application was reviewed,
6 if I could refer back to how our committee works, the
7 pre-review committee reviewed it on the 8th. And that
8 committee meets the day before the board meeting, the
9 loan meeting, board meeting. I call them one and the
10 same. So loans that would have been presented on May 9
11 would have been previewed on May 8.

12 Q. And the information leading up to that loan
13 approval, that would have been accumulated over a period
14 of time prior to May 8?

15 A. Usually the loan officer accumulates that
16 data, compiles a loan package, and then submits it to
17 the review committee the day before the loan meeting.
18 Now, I guess I can't recall if that was presented the
19 week previous, on May 1, because we would have had a
20 loan approval meeting on May 2, I can't recall because
21 of time, if we looked at it the week before or if it
22 came in on May 8.

23 Q. In the documentation that I have received
24 there is a lot of things that are mixed up timewise with
25 loans that were done later and the loan that was the

1 initial loan, was a \$2.2 million loan. Do you know the
2 location of the actual application for the loan? Could
3 you tell me where that would be located in the
4 documentation? And if you want to look kind of towards
5 the 800's, I think that's where I found documents
6 relating to 2006.

7 (Pause in proceedings.)

8 Q. I am looking at Exhibit No. 6 and there is a
9 page numbered 801.

10 A. Okay, thank you.

11 Q. Does that help you find the documents?

12 A. Yes.

13 Q. Among those documents is there any formal loan
14 application that you are aware of?

15 A. There is a loan committee and loan report
16 sheet.

17 Q. And does that have a date?

18 A. Yes.

19 Q. What page number is that just so we know what
20 we are referring to?

21 A. 806. This is what's conveyed as the loan
22 request to the committee.

23 Q. On the copy that I have got it looks like
24 something, when it was copied, didn't come through. Do
25 you know what that would say at the top of the page?

1 A. Could you show me what you are looking at?

2 Q. If you look at the top of the page
3 (indicating). I said Page 806.

4 A. That's what mine said.

5 Q. Sorry, I was looking at the wrong page. So
6 that's the loan application?

7 A. This is what conveys the loan request to the
8 loan committee.

9 Q. What would the loan application actually be?

10 A. It's usually a financial statement. No. 804.

11 Q. And 804, the one I had had some kind of a
12 sticky note pasted in the middle of it -- excuse me,
13 that's 802. Is 802 the first page of that financial
14 statement, or second page? Or is that the same thing.

15 A. It looks like it's the same one, it just has
16 this sticky that's on there.

17 Q. So this is the loan application, then, this
18 financial statement?

19 A. Part of the application. There is a lot of
20 things that constitute the application for a loan on a
21 commercial loan.

22 Q. Could you tell me what those things would be?

23 A. It's usually a compilation of financial data,
24 financial statements, income taxes.

25 Q. And you had all of that information in regard

1 to this particular loan prior to May 8?

2 A. To the best of my knowledge, yes, we did have
3 it. In the affidavit I think it was submitted to Steve
4 Worton at their meeting, he received some information.
5 I don't know when Steve compiled it all.

6 Q. Going back to this general question that I
7 asked you, what things would be required, to your
8 knowledge, for the loan committees to have adequate
9 information to either approve or deny the loan as far as
10 the application and supporting data?

11 A. Usually we like full financial disclosure from
12 the customer, financial statements, related entity
13 financial statements, income tax returns, details of
14 what the project may be, whether it's a loan for an
15 operating loan for a farmer, you know, different type of
16 loans require different type of information.

17 Q. So on this particular one -- and the problem I
18 have is I just have this big pile of paper. What
19 comprised the loan application that was before the
20 committee? And I am pointing to some of these pages,
21 and could you tell me what you considered the loan
22 application to be for this particular loan in 2006?

23 MR. TUCKER: Let's go off the record.

24 (Discussion off the record.)

25 MR. LARSON: Let's go back on the record.

1 Q. We have been off the record and you have been
2 looking through the documents in order to try and locate
3 the documents that would have been associated with the
4 loan transaction of 2006. And could you explain to me
5 how those documents are kept by the bank and where they
6 are located now in the records of the bank?

7 A. The first part of the question was --

8 Q. Have you located the records?

9 A. Some of them.

10 Q. Some of them.

11 A. That I think would have been in the loan
12 package.

13 Q. Is there some reason that the records were not
14 kept separately for each of the transactions?

15 A. Which records?

16 Q. The records relating to the formal application
17 for the \$2.2 million loan in 2006.

18 A. Maybe I'll explain our process.

19 Q. Please.

20 A. The loan officer compiles the information to
21 be submitted to the loan committee for approval.
22 Sometimes it's very extensive in the information when
23 you get into complete copies of income taxes and
24 appraisals. So we use spread sheets to consolidate some
25 of that information, some we deem pertinent, it depends

1 on the transaction. So they compile a loan package
2 which might not be the entire amount of financial data.
3 We try to abbreviate when we feel it's appropriate.

4 Q. So in regard to the formal loan application
5 made by Jefferson Enterprises in April-May of 2006, are
6 all of those documents in the documents that have been
7 produced? And to short circuit you looking through
8 everything, is it possible that some of those records
9 have been destroyed or are not part of the file any
10 longer?

11 A. You know, to the best of my knowledge
12 everything we have we would keep.

13 Q. So when you had the credit committee
14 meeting -- am I using the right terminology?

15 A. The credit committee meeting?

16 Q. Yes.

17 A. Is this for loan approval or pre-review?

18 Q. Pre-review.

19 A. Okay.

20 Q. What documentation would have been presented
21 at that time?

22 A. Do you want me to point it out to you?

23 Q. Yes.

24 (Pause in proceedings.)

25 A. Usually the application consists of current

1 financial statement plus a financial statement spread
2 over the period of years; income tax spread, whether
3 it's corporate or individual, we like both; usually a
4 copy of the most recent year's income tax return, the
5 first page that states income. I don't know the exact
6 form numbers but one that states, say, for example, for
7 2010, maybe Page 1 of the 1040 for 2010 so we can see
8 that year, as an example. Related entity financial
9 statements, the same process, current plus the spread so
10 we can track trends. Consolidated financial statement
11 that brings the entities together if the person has more
12 than one entity.

13 A write-up, you know, comments about the loan,
14 that the loan officer prepares.

15 Q. Is that an official committee report?

16 A. It's an outline. We use the five Cs of credit
17 as an outline.

18 Q. What are the five Cs?

19 A. Character, collateral, capacity, conditions,
20 and credit, that's the five. If an appraisal is
21 involved, maybe a copy of the pertinent pages of the
22 appraisal that state value, how it's appraised. I mean
23 it can be -- each application is different, so depending
24 on the type of credit, it can be very large.

25 Q. Let's go back to this one. We would have had

1 all of those elements that you have just discussed as
2 part of the loan application on this particular loan.

3 A. Yes.

4 Q. And that's the loan in April-May of 2006.

5 A. Right.

6 Q. For \$2.2 million.

7 A. Yes.

8 Q. So if we talk about the loan application in
9 general, it would comprise those things, and then there
10 would be these other items that are mentioned as well in
11 the procedure as far as the memorandum or outline that's
12 prepared on the five Cs and the committee report; is
13 that fair to say?

14 A. In regards to -- fair to say as to what?

15 Q. As to this loan, that there would be those
16 things on this particular loan.

17 A. Yes.

18 Q. Also as part of what you review, in the
19 initial review committee, and then the final approval
20 committee, do you look at, under the Cs, the collateral,
21 do you look at title reports, that type of thing as well
22 at that time?

23 A. No.

24 Q. So you wouldn't look at a title commitment?

25 A. Not usually at that time.

1 Q. What information is transmitted to the
2 intended borrower after the initial review?

3 A. If there are deficiencies in the loan package
4 or elements that we don't have or that the review
5 committee deems would be pertinent to the request, say
6 they are missing a financial statement or verification
7 of a value, something like that that would be pertinent
8 to the credit transaction. That usually goes back to
9 the loan officer, and we communicate that back to the
10 loan officer, usually verbal. And then it's his
11 responsibility before he brings that to the board to
12 answer those questions.

13 Q. To your recollection, did that occur in this
14 particular case?

15 A. Yes.

16 Q. And what things were brought back -- what
17 things were discussed in that regard with this
18 particular loan?

19 A. I can't remember.

20 Q. Were there requests for other information
21 made?

22 A. I can't remember.

23 Q. Specifically did the review committee ever
24 look at the title commitment for the property?

25 A. No.

1 Q. Was there a title commitment for the property?

2 A. Yes.

3 Q. So when would that first have been reviewed by
4 the bank as far as the loan would go?

5 MR. TUCKER: By the bank, you mean any bank --

6 Q. The bank in specific to this transaction. If
7 it wasn't reviewed -- and I believe this committee met
8 somewhere around the 6th of May; is that correct?

9 A. The day before the 8th of May, on or about the
10 8th.

11 Q. So no one had looked at a title commitment, to
12 your knowledge, that would be in the position of
13 approving credit prior to the 8th of May?

14 A. Not that I know of, no.

15 Q. In the answer to interrogatory, that's
16 Interrogatory No. 5 that we discussed before, there is a
17 statement that on May 3, 2006, Worton met with officers
18 of the title company to review the title commitment. So
19 that information wasn't provided to the review committee
20 on the commitment?

21 A. Not that I know of.

22 Q. And on the 8th the commitment wasn't reviewed?

23 MR. TUCKER: By who?

24 Q. By the loan review committee.

25 A. Not that I know of.

1 Q. Have you ever seen the title commitment?

2 A. Yes.

3 Q. Let's see if I can get a page number here.

4 No. 896.

5 A. What page, again, Bruce?

6 Q. I think it's 896. It's in the divider for
7 Exhibit No. 7 (indicating).

8 A. Yes, okay.

9 Q. So it's your testimony that this document
10 wasn't reviewed by the loan committee, the loan review
11 committee on the 8th of May 2006?

12 A. Not that I am aware of.

13 Q. If you will look at Page 896 and that's of
14 this Deposition Exhibit No. 7, at the top there is a
15 notation in someone's handwriting. Do you recognize
16 that handwriting?

17 A. At the top of the page?

18 Q. Yes, at the top of the page.

19 A. It has the initials SEW on it.

20 Q. Do you know who that would be?

21 A. Steve Worton has those initials.

22 Q. Do you ever recall seeing this during the loan
23 approval process?

24 A. Loan approval process? I don't --

25 Q. The committee review.

1 A. Pre-review?

2 Q. Yes, the pre-review.

3 A. I don't recall seeing it on the pre-review.

4 Q. Do you recall seeing it at any time?

5 A. Yes.

6 Q. When did you see that?

7 A. The first time I saw this was after the loan
8 was made.

9 Q. Would that be true for the review committee,
10 the preloan review committee?

11 A. I don't know if the pre-review committee has
12 ever seen the preliminary title report.

13 Q. You first saw it after the loan had closed?

14 A. To the best of my knowledge, yes.

15 Q. If you go to Page 906, that's a part of the
16 title commitment and it's part of exceptions to Schedule
17 B, and there is a designation for No. 23. Do you see
18 that?

19 A. Yes.

20 Q. And that refers to a mortgage dated March 21,
21 2005, on the 80 Acres parcel; is that correct?

22 A. I see Item No. 23, yes.

23 Q. Are you familiar with what that refers to?

24 A. Yes.

25 Q. What would that be?

1 A. That would be a lien on the property that
2 covers Parcel 4.

3 Q. And Parcel 4 would be the 80-acre parcel?

4 A. That 80 Acres, Inc., parcel?

5 Q. Correct.

6 A. Yes.

7 Q. Do you recognize any of the handwriting that's
8 on that copy?

9 A. Not for sure, I don't know exactly whose it
10 is.

11 Q. And on 23 it appears to me to have handwritten
12 to the side of that exception subordination, question
13 mark.

14 A. Yes.

15 Q. And you wouldn't have any idea who wrote that
16 or when it was written?

17 A. I don't know when it was written and I don't
18 know for sure who wrote that.

19 Q. If you would go to Page 914, there appears to
20 be a portion of a commitment that starts again here on
21 Page 914 and goes for a number of pages following that.
22 Have you seen this document before?

23 A. Yes.

24 Q. And can you explain to me whether or not this
25 document was presented to the pre-review committee?

1 A. Not to my knowledge that it was presented to
2 the pre-review committee.

3 Q. And if you follow through, on Page 916 it
4 shows as second commitment, Schedule A; do you see that
5 designation?

6 A. Okay, yes.

7 Q. And also there appears to be a fax
8 transmission notation at the top of the document.
9 What's the date of that?

10 A. May 9, 2006.

11 Q. There is handwriting again on the commitment.
12 Do you have any idea who wrote on the commitment?

13 A. I can't be certain.

14 Q. If you go to the next page, which would be
15 917, again it appears to be part of the same document
16 with the same dates on the top?

17 A. Yes.

18 Q. And, again, there is handwriting on the
19 notations by paragraphs in that document?

20 A. Yes.

21 Q. Do you know whose handwriting that is?

22 A. I don't know for certain.

23 Q. By Subparagraph F it seems to have a question
24 mark and it says must review. Am I interpreting that
25 handwriting correctly?

1 A. Yes.

2 Q. And the same with Subparagraph G?

3 A. Yes.

4 Q. If you would go to the next page, it's the
5 Schedule B, Section 2, part of the same document?

6 A. Yes.

7 Q. And there is handwriting on that?

8 A. Yes.

9 Q. And it appears someone has written okay and
10 scribbled on the page?

11 A. Yes.

12 Q. Do you know who would have done that?

13 A. I don't know for certain.

14 Q. Who usually does that?

15 A. Usually the loan officer does that.

16 Q. Who would the loan officer have been?

17 A. Steve Worton was the loan officer on this
18 case.

19 Q. So that would have been on May 9; is that his
20 writing, to your belief, on May 9?

21 A. Well, it's dated May 9.

22 Q. On the document dated May 9, does that appear
23 to be Steve Worton's handwriting?

24 A. I don't know.

25 Q. On the next page, which is 919, there is again

1 some handwriting on that and a circling of No. 7?

2 A. Yes.

3 Q. Do you know what that refers to, that
4 handwriting?

5 A. It refers that the taxes would be paid
6 current.

7 Q. And there is a bunch of taxes listed following
8 that, and if you go to Page 922, part of the exceptions
9 under Section 2, handwriting on that part as well?

10 A. Yes, there is handwriting on that.

11 Q. And you have no idea, again, who wrote on it?

12 A. I don't know for certain.

13 Q. But your best guess is?

14 MR. TUCKER: Do you want him to guess?

15 MR. LARSON: I really don't want him to guess.

16 Q. Do you believe it may have been Mr. Worton?

17 A. Maybe.

18 Q. And who would be the other alternatives that
19 you would suspect that would have written on the
20 document?

21 A. Tom Romrell.

22 Q. Just as a general question, is this the manner
23 in which title commitments are reviewed for the approval
24 of a loan by the Bank of Commerce?

25 A. Could you say that again?

1 Q. As a usual practice, maybe I will use that
2 word, as a usual practice is this how the Bank of
3 Commerce reviews title commitments?

4 A. Yes.

5 Q. So an individual would go through each
6 exception and make some comment by the exception?

7 A. Yes.

8 Q. And when that's done, is that presented to the
9 loan committee or the board of directors, as it was done
10 in this case, for the final approval of the loan?

11 A. Could you --

12 Q. Once the review of the title commitment has
13 been made and the comments are written on the
14 commitment, is that information presented to the loan
15 committee or the board of directors?

16 A. No.

17 Q. They never see this document?

18 A. No, not usually.

19 Q. How is that information transmitted to the
20 committee that approves the loan?

21 A. It's not.

22 Q. Go back to this document, let's finish up
23 where we are at. At Page 923 there is an exception on
24 this updated commitment, it's No. 22, and it appears to
25 be similar to No. 23 on the April 26 commitment. Is

1 that correct?

2 A. Yes.

3 Q. There is a writing at the side of that
4 particular exception No. 22.

5 A. Yes.

6 Q. And, again, you don't know whose writing?

7 A. No.

8 Q. What does that say on that particular line?

9 A. Must subordinate.

10 Q. Do you know if there was any communication
11 between April 26, 2006, and May 9, 2006, from the bank
12 pre-review committee or the loan approval committee in
13 regard to this subordination of that particular
14 exception?

15 MR. TUCKER: I think the testimony was they
16 never saw it.

17 MR. LARSON: I know that's the testimony. I
18 just want to make sure that there is nothing that was
19 communicated one way or the other.

20 Q. Do you need to take a minute to look at
21 things?

22 A. Yes.

23 MR. LARSON: Let's go off the record.

24 (Discussion off the record.)

25 MR. LARSON: Back on the record.

1 Q. The first question, after you reviewed the
2 documents, was there any communication from the loan
3 review committee or the final approval committee to the
4 borrower of the items that were noted in those
5 commitments?

6 MR. TUCKER: I just want to clarify, you are
7 talking directly from those committees, not through Mr.
8 Worton?

9 Q. Directly from the committee to begin with.

10 A. No.

11 Q. Was there any communication from the
12 committees, the committees haven't seen those documents,
13 was there any communication --

14 MR. TUCKER: What did you say, had or had not
15 seen?

16 MR. LARSON: Had not seen.

17 Q. So the committees hadn't seen those
18 commitments, so they would have had no reason to
19 communicate with the borrower?

20 A. Correct. Could I maybe state something that
21 might clear this up?

22 Q. Sure. What's the reference to, what would be
23 cleared up, is it in regards to these commitments?

24 A. Yes, because usually in our process, in the
25 loan, we go through an approval process, and maybe let's

1 say that the loan is approved. Then, you know,
2 sometimes -- then usually run a preliminary title
3 report. So after the loan is approved based on certain
4 conditions, then you run a preliminary title report to
5 find out what's there, in most cases. So generally, you
6 know, a majority of the time when a loan is presented
7 for approval, the preliminary title report is not
8 presented to them.

9 So after the loan is approved, then the
10 preliminary title report is completed, a loan officer
11 reviews it based on whether the loan was approved this
12 way or this way and he makes notation on the preliminary
13 title report, okay, okay, okay, like we kind of went
14 through, or remove or those type of notations. Those
15 usually occur after the loan is approved but not closed.

16 Q. So in this particular case, though, there
17 appears to have been a commitment on the 26th of April
18 of 2006.

19 A. Yes.

20 Q. So that was done prior to any approval?

21 A. By the bank?

22 Q. By the bank.

23 A. Yes, it appears that the preliminary title
24 report was completed prior to us making a credit
25 decision on that transaction. And can I explain maybe a

1 little more? Sometimes if a customer is considering a
2 transaction, they can have the title work done
3 beforehand; sometimes they do, sometimes they don't, in
4 an effort to speed up the transaction.

5 Q. On a transaction of this size, would you
6 expect that there would be some kind of identification
7 of collateral early on in the process?

8 A. Yes.

9 Q. And would that be the reason that this title
10 commitment was obtained in this particular transaction,
11 the April 26, 2006, title commitment?

12 A. Maybe, possibly. In fact could be.

13 Q. We have looked at a bunch of documents here
14 and I have kind of piecemealed it. Where is the formal
15 application for this loan? Is there a formal
16 application for the loan that's requesting the financing
17 that was eventually granted by the bank?

18 A. Yes, it's in these documents (indicating)
19 somewhere.

20 Q. So it's your testimony that the bank had a
21 formal loan application before it prior to granting this
22 loan?

23 MR. TUCKER: You are talking formal
24 application, you are talking like they need one page
25 that says loan application, is that what you are asking

1 for? He has explained what a loan application is.

2 MR. LARSON: Well, I am asking him if there
3 was a formal loan application, based on your own
4 definition in this particular case.

5 A. Yes, it's in the file, it's in all these
6 documents.

7 Q. So these documents would be the formal loan
8 application wherever they are located in the piles of
9 documents we have?

10 A. Yes.

11 Q. Is there a formal request for the financing
12 anywhere in these documents that you produced?

13 A. From Mr. Morrison?

14 Q. From Jefferson Enterprises.

15 A. From Jefferson Enterprises.

16 Q. I have looked and I haven't found that. So if
17 you know of that, could you point it out or where it
18 could be found.

19 A. No.

20 Q. Is there usually some type of formal request
21 made by a borrower for financing?

22 A. It's usually -- it comes in different forms.
23 Sometimes there is a verbal form that is comprised by
24 the loan officer and submitted for approval. Sometimes
25 it's written. There are many different forms. There is

1 no formal application for name, date, amount, purpose
2 that we have.

3 Q. This particular loan, how was it requested, to
4 your knowledge, by Jefferson Enterprises?

5 A. Initially on the meeting of April 21, when
6 Steve met with Mr. Morrison at the Key Bank office.

7 Q. And apparently there were documents delivered
8 to Mr. Worton at that time?

9 A. Yes.

10 Q. Did those documents ever get to the pre-review
11 committee?

12 A. A portion of them did.

13 Q. Of that portion that got to the review
14 committee, did you see any formal request for the loan?

15 A. From Mr. Morrison?

16 Q. Mr. Morrison, Jefferson Enterprises. To clear
17 that up, when we are talking about the application, we
18 are talking about Jefferson's application but Mr.
19 Morrison was the officer or member of it that was
20 involved.

21 A. Okay.

22 Q. So in the pre-review committee information
23 that you had, was there any request with the conditions
24 presented by Mr. Morrison or Jefferson Enterprises?

25 A. No, it was -- no.

1 Q. Once the application goes through the
2 pre-review committee, what does the pre-review committee
3 do with the application?

4 A. We review it; there is a copy made for the
5 members of that committee, they go through it, they look
6 for documentation, again, financial documentation, are
7 all the tax returns there, financial statements, is the
8 request something that the bank may be interested in,
9 loan to value, who the applicants are, do they have the
10 correct guarantors, do they have the correct collateral
11 position, is it represented in a manner that we can make
12 a decision on when it's presented on Tuesday. They just
13 kind of review that, one, for content; two, for credit
14 quality, underwriting, and they just grind through the
15 paperwork and --

16 Q. What's the net result as presented to the loan
17 approval committee?

18 A. If there are changes -- for the most part it's
19 the same application or the same data. We look at it on
20 Monday. If it looks good, we contact the loan officer,
21 bring it in on Tuesday. If you are missing documents or
22 if you are missing something, if you need to extend your
23 own write-up, if there is something that is not clear,
24 we communicate that to them and then they fix it and
25 then make it in a more presentable manner to the loan.

1 Q. Is that done formally with a written document
2 or is that an oral communication to the loan officer,
3 how is that done?

4 A. It's usually on the phone.

5 Q. So talking about this loan application,
6 Jefferson's loan application, it got to the pre-review
7 committee, that's on the 8th of May?

8 A. Yes.

9 Q. The 8th of May what, if anything, did the
10 review committee do as far as requesting additional
11 information communicating with Mr. Worton or the
12 borrower?

13 A. I can't remember.

14 Q. Would there be any kind of a record of what
15 was done by the review committee?

16 A. No, not to my knowledge.

17 Q. So once it went through the process with the
18 pre-review committee on the 8th, was it then presented
19 for the final approval to the approval committee?

20 A. Yes.

21 Q. Were you involved with that presentation?

22 A. I was not involved in the presentation.

23 Q. Were you present when the presentation was
24 made?

25 A. Yes.

1 Q. Who made the presentation?

2 A. Steve Worton.

3 Q. When Steve Worton made the presentation, who
4 were the members of the loan approval committee?

5 A. Tom Romrell, Ron Crystal, Ron Johnson, and the
6 board of directors at that time.

7 Q. Was Mr. Romrell actually there when that
8 presentation was made?

9 A. Can I take a moment and find the document?

10 Q. Sure.

11 MR. LARSON: Let's go off the record.

12 (Discussion off the record.)

13 MR. LARSON: Back on the record.

14 Q. Was Mr. Romrell present at the loan approval
15 committee meeting?

16 A. Yes.

17 Q. And on what date was that?

18 A. May 9, 2006.

19 Q. You are at the minutes of the meeting. Is
20 there a designation of a Bates stamp number for the
21 document that you are referring to?

22 A. Do you mean 807?

23 Q. What is it entitled?

24 A. Minutes of officers and director meeting.

25 Q. And there are portions of those minutes that

1 are redacted and I assume that has nothing to do with
2 this transaction.

3 A. Correct, those are other loans that were
4 presented.

5 Q. What was the result of the approval?

6 A. A loan for \$2.2 million with interest and
7 principal due in one year.

8 Q. What page are you referring to?

9 A. No. 810.

10 Q. At that time was there any formal -- let me
11 take that word out. At that time after the approval,
12 were there any written conditions or stipulations
13 communicated to the borrower?

14 A. Written?

15 Q. Written.

16 A. Not that I -- I don't know.

17 Q. In the records that I have seen I couldn't
18 find anything in writing. Is it the usual practice of
19 the Bank of Commerce to make a formal written, yes, your
20 loan is approved, these are the conditions you must meet
21 in order for us to close the loan?

22 A. Sometimes yes, sometimes no.

23 Q. Do you know how Jefferson Enterprises became
24 aware of the approval and the conditions for the
25 approval of the loan?

1 A. Mr. Worton called Dustin Morrison.

2 Q. That was the only communication to Mr.
3 Morrison or Jefferson Enterprises about the approval?

4 A. As far as I know, yes.

5 Q. We looked back to the documents following the
6 minute, there is a real estate loan document checklist,
7 Page 811.

8 A. Okay.

9 Q. Are you familiar with that particular
10 document?

11 A. Yes.

12 Q. When was that prepared?

13 A. The date on it is May 9.

14 Q. And can you tell from the document itself who
15 prepared the document?

16 A. There is a signature from Steve Worton on it.

17 Q. And what's the purpose of this checklist?

18 A. We use this form after a loan is approved to
19 help in the preparation of documents prior to loan
20 closing, there is a checklist we go through.

21 Q. Was this something that was before the
22 pre-review committee?

23 A. No.

24 Q. Was this before the final approval committee?

25 A. No.

1 Q. Where would it have been lodged and what was
2 its purpose?

3 A. We use this as an aid to the loan officer,
4 because loans can be very large and there is a lot of
5 paperwork and a lot of requirements, so as a loan
6 officer works through preparation and closing, he
7 follows this.

8 Q. Who would have prepared this checklist and
9 given it to Mr. Worton to follow through?

10 A. Prepared the checklist? The bank prepares --
11 could you define preparation?

12 Q. Well, this is a direction to the loan officer.
13 Is it a blank form that goes to the loan officer?

14 A. Yes.

15 Q. And then he fills in the blanks?

16 A. He fills some in, sometimes a loan secretary
17 helps him with it.

18 Q. So it looks to me like there are a number of
19 boxes that have been checked by hand.

20 A. Yes.

21 Q. And there are a number of boxes that have X's
22 or other symbols in them that are pretyped or typed into
23 the form.

24 A. Yes.

25 Q. Who would have done that?

1 A. The pretyping?

2 Q. Yes.

3 A. The bank management does that. We prepare
4 that for the loan officer on what -- I think if you can
5 read at the bottom of the form on Page 811 there is an X
6 for required, R for strongly recommended, and IA for if
7 applicable, and that helps the loan officer know what's
8 required and what's not.

9 Q. So Mr. Worton would have received this
10 checklist with those items already in it, the ones that
11 are typed in?

12 A. The ones that are typed in, yes, as a guide to
13 help him.

14 Q. So who would have looked at the loan or looked
15 at the application and made those requirements?

16 A. I don't know if I understand your question.

17 Q. Who was involved with preparing this document
18 to give to the loan officer with this strongly
19 recommended or if applicable, that kind of thing, who
20 puts that stuff in for this particular loan?

21 A. The handwritten stuff?

22 Q. No, the preprinted. Is that standard for
23 every loan?

24 A. Yes.

25 Q. So now the next part is the handwritten part.

1 Who would have put that in?

2 A. Usually the loan officer.

3 Q. So Mr. Worton would have filled in those
4 blanks?

5 A. As a general rule usually the loan officer
6 does.

7 Q. But you don't know for sure who did?

8 A. The loan officer signs off on it at
9 completion, the process is you work through this, from
10 start to finish, and once the loan is completed, the
11 loan officer is to review it and then he initials and
12 signs, like Steve did.

13 Q. On No. 5 of the numbered lines in this
14 checklist, there is a statement that says statement of
15 first mortgage holder, it appears to be crossed through
16 by hand.

17 A. Okay, yes.

18 Q. And then in parenthesis there is some
19 handwriting. What does that say?

20 A. Assignment letter.

21 Q. Do you know at all what that is referring to?

22 A. I would think the assignment letter on the
23 appraisal from D.L. Evans, for the appraisal.

24 MR. LARSON: I am kind of at a point where I
25 am going to get away from these documents; it might also

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1 be a good point to have lunch. And then I am going to
2 go back to some specific questions about the loans and
3 the policies and procedures of the bank, and I am
4 guessing I have only about another 45 minutes of
5 questioning, conservatively. Does that work for you
6 guys?

7 MR. TUCKER: That's fine.

8 (Lunch recess taken from 12:00 to 1:10
9 p.m.)

10 MR. LARSON: Back on the record.

11 Q. When we talked about the loan application, you
12 said that there would be, one of the five Cs statement
13 prepared, in this particular loan transaction in April
14 or May of 2006, was there a statement, the CCC statement
15 prepared? And I can help you out for a page, I think
16 it's 801.

17 A. How about 803?

18 Q. There you go, 803, I am sorry.

19 A. It says Customer Analysis on top.

20 Q. Right. So you have located that particular
21 document?

22 A. Yes.

23 Q. Do you know when the document was prepared?

24 A. No.

25 Q. Do you know who prepared the document?

1 A. I think Steve Worton did.

2 Q. The way this document came to me is it had a
3 one page and then the following page appears to be some
4 kind of a financial statement. Is that correct in the
5 way the thing should be?

6 A. No, it appears it's out of order. So the
7 financial statement was inserted. Usually the normal
8 order is a loan committee sheet, and then the comments,
9 and then we get into the financials, and then the taxes.
10 Generally that's how a loan package is prepared.

11 Q. So with this one, if you go to Page 801, and
12 that's the loan committee report sheet --

13 A. Yes.

14 Q. -- and it has a date on it of May 2, 2006?

15 A. Yes.

16 Q. Would that ordinarily accompany the statement
17 that we just talked about?

18 A. Yes.

19 Q. So would that give you any clue as to when it
20 may have been prepared?

21 A. Possibly; I would say -- yes, it could have
22 been prepared around May 2, it could have been prepared
23 earlier.

24 Q. And who prepares this loan committee and loan
25 report sheet --

1 A. The loan officer usually does. In some cases
2 the assistant may prepare it. But this is the document
3 that is presented to the loan committee for approval.

4 Q. On Page 801 there are some handwritten changes
5 on that?

6 A. Yes.

7 Q. Do you know who did that?

8 A. I can't be certain who did that.

9 Q. Well, it looks like, total committed balance
10 customer will owe if this loan is made, and then there
11 is a line crossed out and then a handwritten amount of
12 \$2,200,000. Would that have been the loan officer who
13 prepared that?

14 A. It could have been. Could I speed this up a
15 little bit?

16 Q. Sure.

17 A. Sometimes a loan package is presented and then
18 during the approval process there might be some changes
19 that are made through the approval process in
20 discussions with the loan committee, so sometimes a
21 smaller amount may be approved or different amount may
22 be approved or some changes made. So the loan officer
23 will document those changes or usually the loan officer
24 writes those changes at the table during the process.

25 Q. And based on this document, then, it was

1 originally presented as \$2.8 million, it looks like
2 that's what is crossed through, and then changed to \$2.2
3 million.

4 A. Yes.

5 Q. But when did the change occur, the change from
6 the 2.8 to the 2.2?

7 A. I would say during the course of the
8 presentation, the credit presentation to the committee.

9 Q. We kind of skipped through this before with
10 the balance sheet that had the sticky note on it.

11 A. Yes.

12 Q. Let's go to the customer analysis that was
13 prepared.

14 A. Yes.

15 Q. There are some things in there that I want to
16 cover with you. I suppose that this document was
17 presented to the pre-review committee?

18 A. Yes.

19 Q. And when you were on that committee, did you
20 read this document at that time?

21 A. Yes.

22 Q. Did you also read the information about the
23 financial capacity of these particular borrowers?

24 A. Yes.

25 Q. You had before you, I suppose, the summary of

1 the appraisal; is that also correct?

2 A. Possibly. Sometimes -- possibly, I don't
3 know, I can't remember if I had the summary page or not.
4 It's usually helpful in a credit package to have the
5 page that states the value, to help support the credit
6 request.

7 Q. Just to digress on that, and I am sorry to
8 bounce around like this, this was an appraisal, and I am
9 looking at the Exhibit No. 3, and it has a Bates number
10 of 98, starting on 98, and it's not in the binder, it's
11 right there (indicating).

12 A. Okay.

13 Q. Was that the appraisal that was looked at by
14 the pre-review committee and the approval committee,
15 loan approval committee?

16 A. They did not look at the entire appraisal.
17 But this (indicating) is the basis of the information of
18 the value.

19 Q. That appraisal was initially done for D.L.
20 Evans Bank?

21 A. Yes.

22 Q. And in your prior testimony you said, we
23 talked about a handwritten notation on an assignment
24 letter. Was this appraisal assigned to Bank of
25 Commerce?

1 A. It should have been. I mean that was the
2 procedure to follow, was to have that assigned to the
3 bank.

4 Q. That's your understanding, that it was
5 assigned to the bank?

6 A. Yes.

7 Q. Did anyone on the loan review committee look
8 at the entire document?

9 A. The entire appraisal?

10 Q. The entire appraisal, yes.

11 A. Not that I'm aware of.

12 Q. Would any officers of the bank have looked at
13 the entire appraisal?

14 A. Possibly.

15 Q. Steve Worton at that time was a vice president
16 of the Bank of Commerce?

17 A. Yes.

18 Q. He was also a loan officer?

19 A. Yes.

20 Q. And, as I understand your procedure as you
21 have defined it before, Steve Worton would have
22 originated this loan and got the original information
23 from the prospective buyer.

24 A. Yes.

25 Q. And I used the word originated, it may not

1 have been appropriate. He was the one who started the
2 process for the borrower to apply for the loan?

3 A. Within the bank to submit it through our
4 proper channels, yes.

5 Q. That's what I was asking, not anything outside
6 of the bank's procedures, but within the bank's
7 procedures, he is the one who started the process?

8 A. Yes.

9 Q. And as part of those procedures, does he have
10 authority to accumulate these kinds of documents and
11 additional information to proceed with the loan
12 application to the bank?

13 A. Yes, that's what we ask of the officers, is to
14 collect this data.

15 Q. And so at that point Steve Worton has the
16 authority with the bank to review the bulk of the
17 documents in the appraisal?

18 A. Yes.

19 Q. The loan review committee doesn't want all the
20 detail, they want the summary?

21 A. Yes.

22 Q. So the bank would have relied upon Mr. Worton
23 to have reviewed this information?

24 A. In this case, yes.

25 Q. Is that always the case?

1 A. Not necessarily.

2 Q. What is the usual case?

3 A. It depends on the transaction.

4 Q. So what's the criteria that would change when
5 it's standard procedure?

6 A. It's subjective, depending on the complexity
7 of the loan, understanding of the transaction.

8 Q. This particular transaction, the bank became
9 involved in it April 21 with Mr. Worton, as best we can
10 tell from the information we have. It closes on May 10.
11 Was Jefferson Enterprises or Mr. Morrison or any of his
12 other entities prior customers of the Bank of Commerce?

13 A. Not that I know of.

14 Q. Do you know what the bank's motivation was to
15 get involved with this particular loan?

16 A. We are in the business to loan money. Loans
17 are assets to the bank. And they generate income for
18 the bank.

19 Q. Suppose the reason I ask this question, it's
20 almost like someone out of the blue comes in and asks
21 for a larger note, and on the scale of loans I don't
22 know where it fits, but it appears to be a rather large
23 loan. Was there any other motivation on the part of the
24 bank of wanting to get into a different market, to bring
25 on a different customer that was particular to Mr.

1 Morrison or Jefferson Enterprises?

2 MR. TUCKER: I object to the extent it calls
3 for speculation on his part. If you know, answer it, if
4 you don't --

5 MR. LARSON: I am asking the knowledge of the
6 bank, and he is here to testify about the knowledge of
7 the bank.

8 Q. So within the bank's knowledge, was there
9 anything particular about this loan and Mr. Morrison or
10 Jefferson Enterprises that the bank wanted to go forward
11 with it in such a, I'll use this word, hasty manner?

12 A. So could you go back to the initial question,
13 so I understand what kind --

14 Q. If I can remember the initial question. Was
15 there anything that motivated the bank under these
16 circumstances with Jefferson Enterprises and Mr.
17 Morrison to get involved with this particular loan, to
18 make it that simple?

19 A. Anything that motivated --

20 Q. Motivated the bank.

21 A. All I can say is that we take the credit for
22 its factors that's presented to us, and we approve it
23 based on the factors of the five Cs, do we think it's a
24 good loan, is it a bankable asset, and that's really I
25 guess all I can say.

1 Q. But, to your knowledge, there wasn't anything
2 other than that within the plans of the bank to expand
3 in Pocatello, to get involved with real estate
4 developments or anything of that nature that was a
5 motivation other than just this application?

6 A. No.

7 Q. At that point in time did the Bank of Commerce
8 have any branches in Pocatello?

9 A. No.

10 Q. Was it their plan at that time to have a
11 branch constructed in Pocatello?

12 A. I think there was some discussion about that.

13 Q. Was that discussion made in conjunction with
14 this loan, to your knowledge?

15 A. Not to my knowledge, I don't know.

16 Q. Going back to the customer analysis, sorry to
17 bounce back and forth here, but on a customer analysis,
18 the first part of that is comments, and is that the
19 usual format for your five Cs?

20 A. Yes.

21 Q. Under comments is there any indication of the
22 amount being requested by the potential borrowers,
23 Jefferson Enterprises?

24 A. Yes.

25 Q. And how much was requested?

1 A. \$2.8 million.

2 Q. So back to the loan committee, loan report
3 sheet, apparently that change was subsequent to the time
4 that this was compiled, and this meaning the customer
5 analysis, the change in the amount to \$2.2 million?

6 A. Yes.

7 Q. The second criteria I suppose is the
8 character. Is that usually what you get in the
9 character portion of these customer analyses?

10 A. Yes.

11 Q. The third thing is pretty specific and it runs
12 to capacity. And there are some numbers that are
13 specific in that and maybe you can help me with this.
14 There is a positive cash flow of \$421,048, I don't
15 know if that's a year or month or what, and then it goes
16 on to a debt service ratio. Is that within the
17 procedures and policies of the bank to make that kind of
18 a determination in this part of the analysis?

19 A. Yes, we like to discuss that specific item.

20 Q. And tell me what that means, that service --
21 it says service ration; I am supposing that means
22 service ratio?

23 A. Yes.

24 Q. Can you explain what that is?

25 A. It's a ratio that indicates how much ability

1 they have to service debt.

2 Q. And so what exactly does that indicate in this
3 circumstance?

4 A. For every dollar of debt that is represented
5 in the calculation, there are \$3.63 to cover that.

6 Q. Does it go on to analyze what impact the new
7 loan would have on that ratio?

8 A. It makes a statement as such.

9 Q. And what's the change?

10 A. The debt service ratio drops down to 1.26 to 1
11 on a projected basis.

12 Q. What are the guidelines that the bank follows
13 on those ratios, is there anything in the policies and
14 procedures that dictates what those ratios should be?

15 A. They range from business to business and it's
16 not formally in the policy.

17 Q. If I am following this thing, and correct me
18 if I am wrong, but if I follow this, once the loan is
19 made, instead of having \$2.63 left over in cash flow, it
20 drops down to \$1.26 in cash flow for the business once
21 this loan is in place. Is that a correct
22 interpretation?

23 A. I think you said \$2.63. Did you mean --

24 Q. Excuse me, \$3.63.

25 A. Yes, if this loan was made, that that ratio

1 would drop.

2 Q. And that's a less attractive ratio, I would
3 suppose, from a lending standpoint.

4 A. Somewhat, yes.

5 Q. It goes on to talk about capital, and I think
6 in your testimony before, and if I remember right you
7 talked about not capital but collateral as being the
8 other one of the five.

9 A. Yes.

10 Q. And when you have capital here, is that
11 interchangeable with collateral or is that different
12 under the circumstances?

13 A. A separate item.

14 Q. Is there anything in here that talks about the
15 collateral?

16 A. No, there is not.

17 Q. Is that usually part of what -- well, let's
18 just go on the capital right now.

19 A. Okay.

20 Q. He says in this report from the combined
21 statement the net worth of the applicant is 44 percent
22 with the bulk of the worth being the appraised value of
23 the property, that the bank will be taking as security.

24 What does that 44 percent relate to?

25 A. Can I take a moment and find some docs?

1 Q. Sure.

2 (Pause in proceedings.)

3 Q. I asked you the question about the ratios and
4 we went on to capital and it was 44 percent and you were
5 going to explain that.

6 A. Yes. It looks like he is referencing on Page
7 660, BOC 660. If you will look at the bottom, towards
8 the bottom of that statement it says net worth, 44
9 percent.

10 Q. Okay. So that was what he used for this.

11 A. Yes.

12 Q. And it goes on to say that working capital
13 stands at \$978,413.

14 A. Yes.

15 Q. And that's from the same statement that we are
16 looking at on BOC 660.

17 A. Yes.

18 Q. Is the capacity to service the debt of
19 critical importance in approving or disapproving a loan?

20 A. Yes.

21 Q. And under the conditions of this particular
22 loan, it seems unusual to me that you have got the bulk
23 of the net worth coming from the appraised amount of
24 this property itself and relying on the continuing
25 operation of the business to provide the ability to

1 service the debt. If that is the circumstance, is there
2 any policy or procedure of the bank that controls what
3 those relationships should be between the working
4 capital percentage and the net worth of the borrower?

5 A. As a general rule we want working capital to
6 be positive and the capacity we underwrite as a general
7 rule is 1.25 to 1.

8 Q. That's the minimum or the usual?

9 A. It depends on the credit transaction.

10 Q. The debt-to-asset ratio is 56 percent and it
11 goes on, this young couple has done several things using
12 the talents they have been given and are headed in the
13 right direction. That's the analysis of the capital
14 portion of his presentation.

15 A. Yes.

16 Q. Is there anything in this customer analysis
17 that describes the position that the bank would be in in
18 priority on the collateral?

19 A. Not specifically in this write-up, but, again,
20 this is only a portion of the write-up.

21 Q. Is there anything in any of the documentation
22 prepared by Mr. Worton and supplied to the pre-review
23 committee that mentions the collateral and the position
24 of priority the bank would have in the collateral?

25 A. Yes.

1 Q. And where is that?

2 A. BOC 801.

3 Q. Where does it state that?

4 A. Under collateral or guarantors about halfway
5 down the page, the first DOT, personal guarantees of
6 Dustin and Sonya Morrison.

7 Q. Is there any reference to the collateral that
8 that was referring to?

9 A. Yes.

10 Q. Where would that be?

11 A. Back in the comments section.

12 Q. It says see attached loan documents?

13 A. Yes, comments.

14 Q. And where are those?

15 A. Customer analysis (indicating) on BOC 803
16 under comments.

17 Q. Where does that refer to the priority of the
18 bank on the collateral?

19 A. It talks about the collateral. The position
20 is on the first page, first DOT on 801, first DOT, that
21 means first deed of trust, which is a security
22 instrument used to perfect real estate.

23 Q. I understand that.

24 A. And then we go to the comments in the first
25 portion, there are 385 acres. This project is located

1 in the southern part of town northeast of Century High;
2 385 acres in this development which is being offered as
3 security for this request of 2.8 million.

4 Q. Does it discuss anywhere in particular what
5 the property -- again, there are no descriptions here --
6 of what property that was referred to with the first
7 DOT? We end up with a mortgage, but first DOT.

8 A. Yes.

9 Q. Does it ever describe that in any
10 particularity or what was being talked about as far as
11 the property?

12 A. It talks about the -- again, in the comments,
13 Dustin Morrison, a home builder, and Sonya Kidd, a local
14 realtor, a married couple, have requested that the bank
15 help them with their real estate development project in
16 the Pocatello city limits. It goes on to explain the
17 project is located in the southern part of town
18 northeast of Century High School.

19 Q. That's the extent of any reference to property
20 that you found on the analysis?

21 A. That's written.

22 Q. What's not written that you are aware of?

23 A. That it was discussed in our loan committee
24 (indicating), the appraisal --

25 Q. The summary of the appraisal.

1 A. Yes, the Southern Hills development was the
2 property that was going to be secured for the loan.
3 Again, there is lots of documents in a loan package.
4 This was fairly extensive.

5 Q. So all of the property was to be subject to a
6 first priority on the mortgage to the bank?

7 A. That's how the loan was approved.

8 Q. If you go back to Page 805, we talked about
9 the conditions. It's talking about the bank holding
10 \$500,000 for the payment of interest?

11 A. Yes.

12 Q. Where was that \$500,000 to come from?

13 A. Back on the comments section on 803, it talks
14 about the request, and the loan would be to Jefferson
15 Enterprises, LLC, which Dustin and Sonya are 100 percent
16 owners. The loan will be personally guaranteed by
17 Dustin and Sonya. 500,000 will come from the loan
18 proceeds and set in the bank as a CD as security to pay
19 the monthly interest obligations on this note.

20 Q. And that was under the request for \$2.8
21 million?

22 A. Yes.

23 Q. So as we go back to these conditions, that's
24 where the 500,000 would come from that's referred to in
25 the conditions? That's on Page 805.

1 A. That's how I understand it, yes.

2 Q. If you go on to the rest of the document, it
3 has a credit history and apparently it says that
4 credit accounts have been handled as agreed. There
5 weren't problems with credit at that time?

6 A. Review of the credit report was good, that's
7 usually what that references.

8 Q. So there had been a credit report done?

9 A. Yes.

10 Q. That's the usual procedure with the bank?

11 A. Yes.

12 Q. And then we go to strengths.

13 A. Yes.

14 Q. Is this similar to the character and that type
15 of analysis as well?

16 A. It kind of encapsulates the good, we kind of
17 talk about the good and the bad, yes.

18 Q. And this is Steve Worton's analysis.

19 A. Yes, prior to loan approval.

20 Q. Was there anything else done in regard to
21 these items prior to loan approval, do you know of any
22 other information supplied prior to loan approval in
23 regard to like the strengths, credit history, those type
24 of things?

25 A. Not that I'm aware of.

1 Q. The final thing is weaknesses and it's pretty
2 cryptic. The first item is debt to net worth. Why is
3 that a weakness in this particular transaction?

4 A. As a general rule when debt to worth
5 approaches 1 to 1 or debt to asset approaches 50
6 percent, it's a measure of leverage in the business, and
7 that can be a signal of a high level of debt to service.
8 So he at -- what do we have, 44 percent net worth, so
9 that left 56 percent to debt to asset. So that's a high
10 level of leverage, as a general rule.

11 Q. So if the net worth, say the net worth
12 decreases by \$500,000 or \$600,000 at closing, does that
13 change that ratio?

14 A. Yes.

15 Q. So that would bring it below those standards?
16 The facts of this case are that there was a decrease in
17 net worth at the time of the closing.

18 A. Yes.

19 Q. Would that change that ratio?

20 A. Yes.

21 Q. And would that have been a significant change?

22 A. I would call it significant, yes.

23 Q. And that's from the standpoint of the bank.

24 A. Yes.

25 Q. Is it also a significant change as to the

1 ability of the borrower to service the debt?

2 A. It would have an impact, yes.

3 Q. The second item in that list is a huge project
4 that will be years developing. I guess that's just
5 almost a statement; right?

6 A. Yes.

7 Q. Lack of experience in this large of a
8 development. Now, was there any information supplied
9 other than from Steve Worton on Jefferson Enterprises,
10 Mr. Morrison's other developments or other companies he
11 was involved in?

12 A. There was a comment from one board member that
13 knew of his quality of building homes. I think it was
14 with regard to American Dream, one of his entities,
15 house building entities.

16 Q. Do you recall which director that would have
17 been?

18 A. Mr. Reed.

19 Q. Is he still on the board?

20 A. Yes.

21 Q. And the last thing is the working capital and
22 cash to go on to Phase 1. So I want to kind of break
23 this down. This loan didn't anticipate financing the
24 entire development of the project, did it?

25 A. No.

1 Q. And is that what is meant by a bridge loan?

2 A. Yes.

3 Q. What was the anticipation of the bank in
4 regard to this particular bridge loan as far as how long
5 the bank would be involved with Mr. Morrison?

6 A. One year.

7 Q. And the expectation was, on the bank's behalf,
8 that Mr. Morrison would need working capital, whatever
9 he had himself and additional working capital to enable
10 the business to go on to Phase 1?

11 A. Yes.

12 Q. I would like to direct you again to the time
13 of closing, and at the time of closing there was the 80
14 Acres encumbrance, and I'll use an estimate because I
15 don't know what the balance was. I know there is a
16 closing statement here. But the balance was in excess
17 of \$500,000 in order to close the loan that Mr. Morrison
18 would have to come up with to pay that indebtedness. I
19 suppose that the pre-review committee and also the loan
20 approval committee both were aware of that need?

21 A. The need of what?

22 Q. The need to pay off that particular loan.

23 A. That's a possibility. There are other
24 possibilities there that would grant the bank a position
25 and not necessarily have the loan have to be paid off.

1 Q. You are talking about subordination.

2 A. Yes.

3 Q. Do you know whether or not subordination was
4 possible on this particular transaction?

5 A. I don't.

6 Q. Do you know whether or not subordination was
7 attempted by any of the players, Mr. Worton or Mr.
8 Morrison?

9 A. There is a reference to that on Page 1406.

10 Q. 1406? That's in the interrogatories?

11 A. Yes, sir.

12 Q. What's the reference?

13 A. On May 9, 2006, the bank's board of trustees
14 approved a loan to Jefferson Enterprises, LLC, for 2.2
15 rather than 2.8. Worton called and visited with us
16 about the change. Again Worton reiterated that the
17 bank's mortgage would need to be in a first position for
18 all acreage. Later that evening Dustin called Worton
19 and said he was unable to get 80 Acres, Inc., to
20 subordinate their lien position.

21 Q. So that's after approval of the loan prior to
22 closing, that the bank was aware that subordination
23 wasn't an option?

24 A. Yes.

25 Q. So what options were left to Jefferson

1 Enterprises at that time?

2 A. Don't accept the loan.

3 Q. Or what?

4 A. Or get it paid off.

5 Q. And the source of payment would be from their
6 capital, working capital, I suppose.

7 A. That's one source.

8 Q. In fact that was the source in this case?

9 A. Yes.

10 Q. What other source would you be looking at
11 within hours of closing to do that other than your own
12 money?

13 A. You can borrow it.

14 Q. Not very likely to get it borrowed at that
15 time?

16 A. I don't know.

17 Q. Was there any request that the bank loan the
18 extra money?

19 A. Yes.

20 Q. And the bank, I mean Bank of Commerce.

21 A. Yes.

22 Q. And that request was denied?

23 (Pause in proceedings.)

24 Q. Do you need a minute to go through those
25 documents?

1 A. Just a second, I would like to read them, yes.

2 MR. LARSON: Let's go off the record.

3 (Discussion off the record.)

4 MR. LARSON: Back on the record.

5 Q. Have you found what you were looking for?

6 A. Yes. I guess in reference back to Page 1407,
7 on May 10, '06, Karen Hammond and Worton had an early
8 morning phone call with Romrell regarding Dustin's
9 inability to place the bank in a first position on all
10 the secured property as the board had required for the
11 loan to be approved. Worton told Romrell about Dustin's
12 idea to allow him time the following week to get the
13 board's approval for an initial loan for funds to be
14 used to pay off the 80 Acre, Inc., debt. Romrell was
15 not in favor of paying off the 80 Acre, Inc., lien with
16 an additional loan from B of C.

17 Q. So that's the answer of what happened --

18 A. Yes.

19 Q. Was there any other request made in that
20 regard that you are aware of by Mr. Morrison at that
21 late of a time to find money elsewhere other than his
22 own money?

23 A. Not that I'm aware of.

24 Q. So in this regard, if I can just kind of
25 summarize it, the initial proposal was for \$2.8 million

1 and part of that was presumed to pay off some of the
2 accruing costs and so on in the transaction. Is that a
3 correct statement?

4 A. The 2.2 million?

5 Q. I am talking about the analysis we just talked
6 about, starts out at 2.8 and there was \$500,000 in there
7 for debt service, basically.

8 A. Yes.

9 Q. So that was changed and the \$500,000 was gone
10 out of that. The loan was also submitted on the basis
11 that there was availability of capital, basically an
12 equity, and also in cash flow. So those were the other
13 items. And those two items were decreased substantially
14 because of the amount of the loan was less than the 2.8;
15 is that a correct statement?

16 A. Yes.

17 Q. That didn't change the bank's ability to loan
18 to Jefferson Enterprises, Morrison's other entities that
19 were involved in this, didn't change the bank's
20 willingness to make the loan at that point?

21 A. Well, one thing that the bank did approve was
22 no monthly debt service on the loan.

23 Q. And when was that approved?

24 A. On the 10th -- or 9th, whatever day -- the
25 9th.

1 Q. So how does that help in the ratios?

2 A. He doesn't have to pay the interest monthly.

3 Q. When does he have to pay it, though?

4 A. At maturity.

5 Q. So a year later he has to come up with the
6 additional sums to pay the loan?

7 A. Yes, but with the nature of a bridge loan is
8 that it's just a bridge of gap in time and it's a
9 short-term loan that will either be paid off from other
10 sources or is mature in a year.

11 Q. So the impact on the borrower, then, was less
12 capital in hand and maybe less impact on the cash flow
13 because of deferring the interest payment.

14 A. Yes.

15 Q. Was that the motivation behind, the motivation
16 in not allowing the additional funds to be placed into a
17 CD like was described in that analysis, was that the
18 motivation behind that, because the bank believed there
19 was adequate cash flow without the monthly interest
20 payments?

21 A. I guess -- I would say that's not -- could you
22 restate that again?

23 Q. I used motivation, maybe that's the wrong
24 word. When bank presidency Romrell says, no, we won't,
25 the bank won't loan you the additional \$500,000 to be

1 held in a CD for debt service, interest payment,
2 whatever, was that the reason that the bank justified
3 that, is because of the lesser impact on cash flow by
4 not having monthly interest payments?

5 A. I would say no -- I mean the impact is going
6 to be the same. At the end of the day he is still going
7 to owe about the same amount of money. Whether we loan
8 him the \$500,000 and put it in escrow and then feed the
9 interest every month and run the loan balance up or if
10 we make the loan and don't schedule an interest payment,
11 in a year theoretically it's going to be close to the
12 same amount.

13 Q. And if the bank was looking at someone like
14 Jefferson Enterprises that had this obligation at the
15 Bank of Idaho, his creditworthiness would be impacted
16 significantly by those ratios, interest accruing, and
17 all of those things?

18 A. It could be.

19 Q. Is there any circumstance when that wouldn't
20 be, when it wouldn't be impacted?

21 A. I guess if you take a dollar out, it's going
22 to have an impact, so it's all relative.

23 Q. Once the loan closed and Morrison-Jefferson
24 were doing whatever they were doing at that time, was
25 there a necessity for additional funding in this

1 transaction?

2 A. Could you explain additional funding?

3 Q. Were there additional loans made to Mr.
4 Morrison -- not Mr. Morrison, but Jefferson Enterprises?

5 A. Yes.

6 Q. What was the reason for that?

7 A. Interest.

8 Q. Can you describe the circumstances of how the
9 that -- you know, the timeframe and what was done?

10 A. So we made the loan in 2006 -- I guess if you
11 would refer to 1408.

12 Q. Okay.

13 A. We have got a year, the loan has matured.
14 It's still there, the bridge loan has matured and we
15 have interest that's due. And so in June Dustin made
16 application for \$400,000 to pay interest on the bank and
17 then create an interest reserve to allow -- and the
18 intention was to allow him to continue marketing the
19 property, to either find an investor or get it sold,
20 whatever. It was to work with the customer and give him
21 more time and bring the loan current.

22 Q. I want to go back to where we were, my client
23 made a point here with me. Without the working capital
24 balance the way it was in the analysis that was done,
25 without that amount being in there, would the loan have

1 been approved when it was before the approval committee,
2 would that have been approved if the working capital was
3 not what it was stated in your analysis?

4 A. I don't know what they would have approved or
5 what they wouldn't have, I don't know.

6 Q. Is it likely that they would have?

7 A. I don't know. I mean it was a significant
8 credit factor. It's over the loan to value at a very
9 low rate.

10 Q. Let's go to Page 487, it's right on the Tab 4.

11 A. Okay.

12 Q. Is this the additional financing that you were
13 talking about, reading in the interrogatories?

14 A. No.

15 Q. Is this an additional financing request?

16 A. Yes.

17 Q. Could you tell me the circumstances of this
18 request?

19 A. Yes.

20 Q. And the document I am referring to is the loan
21 committee and loan report sheet.

22 MR. TUCKER: Does it have a date or --
23 BOC 487?

24 MR. LARSON: Yes, BOC 487.

25 A. Again, that refers, if you go back to 1409, it

1 talks about a meeting or a date of July 9, loan request
2 for \$281,000 was made.

3 Q. And that was declined?

4 A. Yes.

5 Q. Do you know the reason it was declined?

6 A. Again, several factors that went into that.

7 And I actually presented this to the loan committee.

8 Q. So you were the one making the proposal and
9 not Mr. Worton at that time?

10 A. Correct.

11 Q. Was Mr. Worton still an employee of the bank?

12 A. You know, I can't remember at that time. He
13 might have been and he might not. I can't remember when
14 he left.

15 Q. But he had no further involvement with this
16 transaction.

17 A. Correct.

18 Q. Why was it that you were presenting that
19 request to the loan committee?

20 A. Because at this stage in the game or during
21 the process of the loan it had become distressed, and so
22 it was transferred to myself as credit administrator
23 because it was a troubled credit at that point.

24 Q. Is that a requirement of the FDIC?

25 A. Not necessarily. It was more management's

1 decision at that point.

2 Q. So were you advocating for this additional
3 loan or not?

4 A. I recommended it.

5 Q. And why were you recommending it?

6 A. Well, we had a -- there was a meeting with Mr.
7 Romrell and Mr. Morrison on May 13 and myself --

8 Q. What year was that?

9 A. '08, again referencing 1409 on or about May
10 13. And we had a meeting to discuss what we were going
11 to do, how are we going to work through this credit,
12 because, again, we had gone another year and the
13 property had not moved, it was currently in a delinquent
14 status.

15 Q. Why were you recommending the loan be
16 approved?

17 A. To allow the customer some more time to market
18 the property, to get to a resolution with the loan.

19 Q. Part of your presentation -- I guess that's
20 your work on 489, comments?

21 A. Yes.

22 Q. -- you have the strengths, still had
23 acceptable loan to value based on the current appraisal?

24 A. Yes.

25 Q. So you believed that there was equity in the

1 project?

2 A. Yes.

3 Q. And the weaknesses, you had limited market for
4 this size of asset, so how did you determine the market
5 for the asset?

6 A. Some of the input was from Mr. Morrison, and
7 when we discussed that, you know, this is a large
8 project, there is roughly a thousand lots, that's big.
9 You know, at this point the real estate market has
10 started to turn somewhat. And so the market was
11 contracting and this is a large development.

12 Q. So the limited market and the soft real estate
13 market were kind of tied together on those two comments
14 about weaknesses.

15 A. I would say so.

16 Q. And the one in the center says lack of working
17 capital within the operation. And how did you come to
18 that conclusion?

19 A. I guess a quick, on Page BOC 490, have a
20 current ratio of 102 percent, lower right-hand corner
21 (indicating).

22 Q. I'm just trying to get this straight in my
23 mind here what we are looking at. So on this document
24 it's called the Bank of Commerce Consolidated Financial
25 Statement.

1 A. Yes.

2 Q. And it has some columns with some names at the
3 top, Jefferson Enterprises, and you follow that column
4 down and the current ratio of Jefferson Enterprises was
5 1 percent.

6 A. Yes.

7 Q. And then the next one is ADC. Do you recall
8 what that abbreviation was for?

9 A. I think it's American Dream Construction or
10 Contractors, one of Dustin's entities.

11 Q. So that goes down and it has 2.6627 percent.

12 A. Yes.

13 Q. And then we follow to the next column, it's
14 got ADHB.

15 A. Yes.

16 Q. And I'm guessing that is American Dream Home
17 Builders.

18 A. Yes.

19 Q. And that follows down and there is a hundred
20 percent there.

21 A. Yes.

22 Q. So the current ratio is a hundred percent,
23 what is that, 1 to 1 or --

24 A. No, it means that he is -- okay, on ADHB?

25 Q. Right.

1 A. It basically calculates -- the calculation is
2 current assets divided by current liabilities, so if you
3 are in that column, Bruce, you have 4.4 million as the
4 current asset, divided by current liabilities of
5 basically 4.4 million, so basically 1 to 1.

6 Q. So your liability is equal to your debt?

7 A. Yes.

8 Q. So that's how we get the 102. So your
9 liabilities are greater than your debt; is that the
10 correct way to look at that?

11 A. 102?

12 Q. Yes.

13 A. Your current liabilities are less than your
14 current assets.

15 Q. I am sorry with the math. But that's very
16 nearly your debts are equal to your liabilities.

17 A. Yes. Another measure of that is working
18 capital, if you go one more line below that, that's
19 measured in dollars versus a ratio.

20 Q. Is there a document that you can compare these
21 same calculations that was done at the time of the loan
22 in 2006? And I can't point you to the page on that, I
23 know I have seen it. I assume it's under Tab 5.

24 A. I would say 660.

25 Q. And on 660 it doesn't appear to be broken down

1 in those columns with the various entities.

2 A. Can you give me one moment?

3 Q. Sure. I think I have seen it as well and I
4 can't tell you where to go.

5 MR. LARSON: Off the record.

6 (Discussion off the record.)

7 MR. LARSON: Let's go back on the record.

8 Q. Were you able to find, Mr. Morrison, a
9 consolidated financial statement breaking out the
10 various entities that was prepared prior to the 2006
11 loan?

12 A. No, I couldn't find it in all of these
13 documents.

14 Q. Did you find a consolidated financial
15 statement of all of the entities that provided the same
16 information for all of the entities?

17 A. Did I find what?

18 Q. Did you find a financial statement that would
19 have combined the assets of all of the Morrison
20 entities?

21 A. No, not in my review, no, not right now.

22 Q. So as we go back to this customer analysis in
23 2006, and we are talking about a current ratio of debt
24 to asset of 134 percent, prior to the loan being made --

25 A. What page is that, please?

1 Q. That's Page 803.

2 A. Okay.

3 Q. So in 2006 the current ratio was 134?

4 A. That's what this is, yes.

5 Q. And I think you pointed out where it came from
6 in your prior testimony, that calculation. And the
7 debt-to-asset ratio in that was showing as 56 percent?

8 A. Yes.

9 Q. And working capital was at 978,413.

10 A. Yes.

11 Q. And then back to 490, which is the
12 consolidated financial statement dated 7/3/2008 --

13 A. Yes.

14 Q. -- the current ratio went down to 102, which
15 means that there was more debt to asset than there was
16 in 2006?

17 A. No, there is just less. I mean when you
18 reference 102, again, that's current assets divided by
19 current liabilities, so current assets are just 102
20 percent or 2 percent higher than the current
21 liabilities, so they are bigger.

22 Q. So 134 is less?

23 A. No, 134 is bigger.

24 Q. I think I was trying to make that point.

25 A. Yes.

1 Q. In 2006, that was the higher ratio and more
2 favorable ratio.

3 A. Yes.

4 Q. It's less favorable in 2008.

5 A. Sure.

6 Q. And as far as the working capital, it shows
7 70,867 in 2008 compared with 978,000 in 2006.

8 A. Yes.

9 Q. That's a significant change.

10 A. Yes.

11 Q. The day after this first loan closed I think
12 we established that there was a substantial change at
13 that time in both the ratios and the working capital
14 because of the need to pay off the 80 Acre parcel.

15 A. Yes.

16 Q. And I don't suppose that there is any analysis
17 that was ever done the day after --

18 A. No.

19 Q. -- to find out what those ratios were.

20 A. No.

21 Q. When this second extension was requested, the
22 one in 2007, I believe, when the note came due -- am I
23 right on dates?

24 MR. TUCKER: You said the second extension.
25 Is that what you --

1 MR. LARSON: No, the extension. June 26,
2 2007.

3 A. That would be the first extension.

4 Q. The first extension, okay. Was there a new
5 appraisal done at that time?

6 A. I don't know; I would have to -- I don't know.

7 Q. Is there any way you could find out quickly?
8 There was a second appraisal done by Free and
9 Associates; is that correct?

10 A. Yes, and I'm not sure when that was.

11 Q. Was it subsequent to the initial closing?

12 A. Yes.

13 Q. The second Free and Associates appraisal, do
14 you recall whether it was more or less than the original
15 appraisal?

16 A. I can't recall. I would have to review the
17 appraisal, I couldn't tell you off the top of my head.

18 Q. Attached to the answers to interrogatories,
19 and that's Exhibit No. 18, and back to Page 1419, that
20 was attached as a document produced in addition to all
21 these other documents that were produced on a CD, but
22 this was just attached to the responses. Is that a
23 document that you provided to your counsel in response
24 to our request for production?

25 A. Yes.

1 Q. Does this encompass the entire written real
2 estate loan policy of the Bank of Commerce?

3 A. There are some citations to real estate loans
4 under our regular loan policy as well.

5 Q. So regular loan policy involves any type of
6 loan, not just loans secured by realty?

7 A. Correct, it encompasses a lot of -- yes, all
8 loans.

9 Q. Was that particular policy provided in
10 response to our request?

11 A. Yes.

12 Q. The general loan policy?

13 A. Yes.

14 Q. And is that part of the documents that are
15 attached to the response?

16 A. Yes.

17 Q. So these documents that are attached encompass
18 the entire written loan policy of the Bank of Commerce?

19 A. It appears so, yes.

20 MR. LARSON: I think that's all I have. If
21 you will give me a few minutes.

22 (Short recess.)

23 MR. LARSON: Back on the record.

24 Q. I do have more questions, I apologize.

25 But going to the real estate loan policy,

1 during our recess you pointed out that the bank's real
2 estate loan policy that was provided based on our
3 request for production was the newer version.

4 A. Correct.

5 Q. Is there an older version?

6 A. Possibly; I think I can find one.

7 Q. And if you could find one, would you provide
8 that to your attorney?

9 A. Yes.

10 Q. And agree to supplement these things with that
11 information?

12 A. Yes.

13 Q. Was the general loan policy also updated?

14 A. It has been but the policy I provided was the
15 oldest one I could find when the request was made.

16 Q. What's the date on that, '07?

17 A. Yes.

18 Q. Do you believe that you can find the older
19 version of that as well?

20 A. I don't know; I have looked specifically to
21 see what I could find when we requested and this is the
22 oldest one I could find.

23 Q. One other thing I haven't asked you about.
24 During this process of trying to get extensions on the
25 loan and some of the other things, was Mr. Morrison

1 attempting to sell the property or get partners and that
2 type of thing?

3 A. That was my understanding, yes.

4 Q. And he had represented that to you as a bank
5 officer at that time?

6 A. Yes, he presented several alternatives of
7 different things that he was pursuing to try to either
8 sell the property or get investors and things like that.

9 Q. So later in the process you made additional
10 loans to him but at the time of the closing there was
11 resistance to making that \$500,000 loan for debt
12 service; correct?

13 A. Yes.

14 Q. Mr. Morrison's working capital was decreased
15 and his ratio, current ratio of assets to liability was
16 substantially impacted because of the payoff of the 80
17 Acre parcel; isn't that right?

18 A. Yes.

19 Q. Had that payoff occurred prior to the time
20 that the loan review committee saw the application,
21 would the loan have been approved under the policies of
22 the bank at that time?

23 A. I don't know.

24 Q. Would it have been a significant factor in the
25 approval or disapproval of the loan?

1 A. Yes.

2 Q. No question that the use of working capital to
3 pay off the 80 Acres reduced that working capital
4 significantly?

5 A. Yes.

6 Q. And as we look through the documents to the
7 later date, it went from around \$900,000 to as little as
8 \$70,000.

9 A. Yes.

10 Q. The bank was aware that Jefferson Enterprises
11 was just one of the entities that Mr. Morrison owned and
12 operated?

13 A. Yes.

14 Q. And the other entities included a construction
15 company, a home building company, and each of those
16 depended on the same pool of working capital?

17 A. Yes.

18 Q. With the changes that were made in the
19 availability of working capital and the increases in his
20 ratios, the differences in the ratios, would that have
21 an impact on another lender as far as loaning money on
22 this project?

23 A. Could you restate that or repeat it?

24 Q. The decrease in working capital and the change
25 in the ratios that were significantly changed, would

1 that have an impact on another lender loaning money to
2 Mr. Morrison or his entities to take care of this bridge
3 loan?

4 A. It could, yes.

5 Q. Would that have the same impact on investors
6 or potential partners in the project?

7 A. Possibly.

8 Q. You are saying possibly. Can you tell me
9 circumstances where you would think it wouldn't have any
10 impact on an investor or another partner into the
11 business?

12 A. One example would be possibly a hard money
13 lender or a private financing. Sometimes they don't
14 look at the same criteria as a normal course of
15 financing would, they might look more heavily at
16 collateral rather than working capital or capacity. It
17 depends on their risk appetite.

18 Q. Without the working capital in these entities,
19 would Jefferson Enterprises and the other entities owned
20 and operated by the Morrisons have been able to continue
21 to earn as they had in the past?

22 A. I don't know.

23 Q. If the Bank of Commerce were loaning money to
24 an entity like Jefferson and Mr. Morrison's other
25 entities, would working capital have an impact on your

1 willingness to extend credit for other projects?

2 A. Yes.

3 Q. And that would be the same with any other
4 investor or partner in the same type of business?

5 A. As the lender?

6 Q. As the lender.

7 A. I don't know if I -- another company like Mr.
8 Morrison's, is that what you are saying?

9 Q. Someone that would partner with him to
10 develop, for instance.

11 A. Okay.

12 Q. Would the lack of working capital on the part
13 of Morrison's entities have an impact on the ability to
14 attract that type of partner?

15 A. It might; it might be an opportunity.

16 Q. I guess the last thing is that in 2007 when
17 the extension was made, the money, that money was loaned
18 to the Morrisons even though the ratios were changed,
19 the working capital was lower, and the appraisal was
20 less?

21 A. I don't know the appraised value in 2007, I
22 couldn't find it, I don't know that number.

23 Q. Assuming that the value was less than the
24 appraisal.

25 A. Okay.

1 Q. Why was the additional extension made, if all
2 those things had changed in a negative way?

3 A. We felt that there was still, to work with the
4 customer, to allow him time to still move the project,
5 we thought that was an acceptable risk to the bank to
6 make when we evaluated his credit.

7 MR. LARSON: Thank you. That's all I have.

8 (Witness excused at 2:50 p.m.)

9 (Signature requested.)

10

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Mike Morrison 11/3/2011

1 CERTIFICATE OF MIKE MORRISON

2
3 I, MIKE MORRISON, being first duly sworn, depose and
4 say: That I am the witness named in the foregoing
5 deposition; that I have read said deposition and know
6 the contents thereof; that the questions contained
7 therein were propounded to me; and that the answers
8 therein contained are true and correct, except for any
9 changes that I may have listed on the Change Sheet
10 attached hereto.

11 DATED this ____ day of _____, ____.

12 CHANGES ON ERRATA SHEET YES ____ NO ____

13
14 _____
15 MIKE MORRISON

16 SUBSCRIBED AND SWORN to before me this ____ day
17 of _____, ____.

18
19 _____
20 NAME OF NOTARY PUBLIC

21 NOTARY PUBLIC FOR _____

22 RESIDING AT _____

23 MY COMMISSION EXPIRES _____
24
25

Mike Morrison 11/3/2011

1	CHANGE SHEET FOR MIKE MORRISON		
2	PAGE__	LINE__	REASON FOR CHANGE _____
3	READS _____		
4	SHOULD READ _____		
5	PAGE__	LINE__	REASON FOR CHANGE _____
6	READS _____		
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8	PAGE__	LINE__	REASON FOR CHANGE _____
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18	READS _____		
19	SHOULD READ _____		
20	PAGE__	LINE__	REASON FOR CHANGE _____
21	READS _____		
22	SHOULD READ _____		
23			
24	DEPONENT SIGNATURE: _____		
25			

Mike Morrison 11/3/2011

REPORTER'S CERTIFICATE

I, PAUL D. BUCHANAN, CSR NO. 7, Certified
Shorthand Reporter for the State of Idaho, certify:

That the foregoing proceedings were taken before
me at the time and place therein set forth, at which
time the witness was put under oath by me;

That the testimony and all objections made were
recorded stenographically by me and were thereafter
transcribed by me, or under my direction;

That the foregoing is true and correct record of
all testimony given, to the best of my ability;

I further certify that I am not a relative or
employee of any attorney or party, nor am I financially
interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this
11th day of November, 2011.



PAUL D. BUCHANAN, CSR, RPR, RMR

Notary Public

P.O. Box 2636

Boise, Idaho 83701-2636

My Commission expires: June 20, 2016

DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

THE BANK OF COMMERCE, an)
Idaho banking corporation,)
 Plaintiff,)

vs.) Case No.

JEFFERSON ENTERPRISES, LLC,) CV 08-4231 OC
an Idaho limited liability)
company, DUSTIN MORRISON)
and SONYA KIDD aka SONYA)
MORRISON, THE CITY OF)

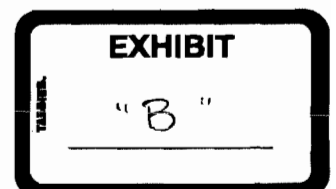
(Caption continued.)

ORAL DEPOSITION OF STEVEN WORTON

Taken on November 4, 2011

REPORTED BY:

PAUL D. BUCHANAN, RPR, RMR,
CSR No. 7, and Notary Public



1 Pocatello, an Idaho)
 2 municipality,)
 3 Defendants.)
 4)
 5 DUSTIN MORRISON and SONYA KIDD)
 6 aka SONYA MORRISON, and)
 7 JEFFERSON ENTERPRISES, LLC,)
 8 an Idaho limited liability)
 9 company,)
 10 Counterclaimants,)
 11 vs.)
 12 THE BANK OF COMMERCE, an Idaho)
 13 banking corporation,)
 14 Counterdefendant.)
 15)
 16
 17
 18
 19
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 21
 22
 23
 24
 25

1 APPEARANCES:
 2
 3 For the Plaintiff:
 4 BRIAN T. TUCKER
 5 Nelson Hall Parry Tucker
 6 Attorneys at Law
 7 P. O. Box 51630
 8 Idaho Falls, Idaho
 9
 10 For the Defendants Jefferson Enterprises, LLC,:
 11 A. BRUCE LARSON
 12 ABLE Law, PC
 13 Attorney at Law
 14 155 South Second
 15 Pocatello, Idaho
 16
 17 Also Present:
 18 Dustin Morrison
 19 Mike Morrison
 20
 21
 22
 23
 24
 25

I N D E X

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1 BE IT REMEMBERED that on November 4, 2011, at
 2 the hour of 9:14 a.m. the deposition of STEVEN WORTON,
 3 produced as a witness at the instance of the defendants
 4 Jefferson Enterprises in the above-entitled action now
 5 pending in the above-named court, was taken before Paul
 6 D. Buchanan, CSR #7, and notary public, State of Idaho,
 7 in the law offices of ABLE Law PC, 155 South Second
 8 Avenue, Pocatello, Bannock County, Idaho.
 9

10 WHEREUPON, the following proceedings were had:
 11

12 STEVEN WORTON,
 13 called at the instance of the defendants Jefferson
 14 Enterprises, having been first duly sworn, was examined
 15 and testified as follows:

EXAMINATION

17 BY MR. LARSON:

18 Q. Would you state your name, please, and your
 19 address?

20 A. Steven Worton, 179 Polk Street, American
 21 Falls, Idaho 83211.

22 Q. Is it all right if I call you Steve in this
 23 deposition?

24 A. Sure.

25 Q. Have you had your deposition taken before?

1 A. Yes.

2 Q. On more than one occasion?

3 A. Yes.

4 Q. So you understand some of the basic things
5 about the deposition. The court reporter takes
6 everything you say down verbatim.

7 A. Yes.

8 Q. And the same with the questions I ask you, so
9 please wait until I complete my question before you
10 answer. Also he can't get the nod of the head or the
11 uh-huh, huh-huh, as far as what that means, so if you
12 could respond orally to the questions, that makes for a
13 better record. If I ask you a question that is not
14 understandable or you don't quite get what I am asking,
15 feel free to ask me to repeat it or rephrase it. And
16 I'll try to give you the courtesy of answering the
17 questions before I try to ask another one.

18 A. Okay.

19 Q. Could you tell me where you graduated from
20 high school?

21 A. Star Valley High School in Afton, Wyoming.

22 Q. What year would that have been?

23 A. 1977.

24 Q. Following high school did you have any formal
25 education?

1 Q. What did you do with the CPA firm?

2 A. Just accounting work, is what I did.

3 Q. And then you went to work for --

4 A. Farm Credit Services.

5 Q. What year would that have been, approximately?

6 A. In the mid to late eighties.

7 Q. And where were you at when you worked for Farm
8 Credit Services?

9 A. In Worland, Wyoming.

10 Q. Following that employment what was the next
11 employment, again?

12 A. I owned my own business.

13 Q. What type of business did you have?

14 A. It was a livestock auction in Wyoming.

15 Q. How long did you operate the livestock
16 auction?

17 A. 13 to 15 years.

18 Q. Are you an auctioneer?

19 A. No.

20 Q. What was the auction called?

21 A. Riverton Livestock Auction.

22 Q. And I guess that was in Riverton.

23 A. Yes.

24 Q. Following that you went to work for Farm
25 Credit Service?

1 A. Yes, I did.

2 Q. What was that?

3 A. University of Wyoming, I graduated with a B.S.
4 in accounting.

5 Q. Are you a CPA?

6 A. No.

7 Q. Following your graduation from the University
8 of Wyoming, did you take any other college classes or
9 did you get any other degrees?

10 A. No.

11 Q. Could you tell me your employment history from
12 the time that you graduated from college?

13 A. I worked for American National Bank, then went
14 to a CPA firm in Jackson and worked for Farm Credit
15 Services, and then I owned my own business. And then I
16 came to the Bank of Commerce and now I work with the
17 U.S. Government.

18 Q. How long were you employed with the first bank
19 that you worked for?

20 A. Two or three years.

21 Q. What were your duties at that --

22 A. I was a loan officer/cashier.

23 Q. And then from that point on you went to work
24 for Farm Credit?

25 A. CPA firm in between.

1 A. No, I went to work for the Bank of Commerce.

2 Q. What year would that have been?

3 A. 2003.

4 Q. When you went to work for the Bank of Commerce
5 what type of jobs did you hold?

6 A. I am sorry, 2006.

7 Q. It was 2006 that you went to work for the Bank
8 of Commerce?

9 A. Yes.

10 Q. Do you remember what month in 2006?

11 A. It was February.

12 Q. And what was the position that you occupied
13 with the Bank of Commerce at that time?

14 A. Vice president/loan officer.

15 Q. Where was your office?

16 A. In American Falls.

17 Q. How long did you work for Bank of Commerce?

18 A. Until March of 2009.

19 Q. Was your employment with the Bank of Commerce
20 terminated in March of 2009?

21 A. No, I resigned.

22 Q. What was the reason for your resignation?

23 A. I went to work for a biofuel company.

24 Q. What is that called?

25 A. Pleasant Valley Biofuels.

1 Q. How long were you employed with Pleasant
2 Valley?
3 A. I still am employed with them.
4 Q. I thought you said you were working for the --
5 A. I am, I work for the government, too.
6 Q. What is your employment with the government?
7 A. I am an accountant at the air force base in
8 Mountain Home.
9 Q. How long have you had that position?
10 A. Since March of this year.
11 Q. And you are just a civilian employee of the
12 air force base?
13 A. A GS employee, yes.
14 Q. Let's get more specific about the facts in
15 this case. When did you first meet Mr. Dustin Morrison?
16 A. Looking at my affidavit, it was in April of
17 2006.
18 Q. And what was the reason you came to meet with
19 Mr. Morrison in April of 2006?
20 A. Pam Wake had called me and said she had a
21 project that she wanted me to look at and arranged a
22 meeting with Dustin and myself.
23 MR. LARSON: Let's mark this as No. 20.
24 (Deposition Exhibit No. 20 marked for
25 identification.)

1 Q. Mr. Worton, I am handing you what's been
2 marked as Deposition Exhibit No. 20, and you mentioned
3 you had an affidavit. Is this the same affidavit that
4 you are referring to?
5 A. Yes.
6 Q. And what's the date that you signed that
7 affidavit?
8 A. The 23rd of June, 2009.
9 Q. So that was signed after your employment
10 terminated with the Bank of Commerce?
11 A. That's correct.
12 Q. Do you recall the circumstances of why you
13 were asked to sign this affidavit?
14 A. I don't.
15 Q. Do you recall where you signed the affidavit?
16 A. It was in Pocatello here.
17 Q. Do you recall who you provided the information
18 to to prepare the affidavit?
19 A. Doug Hall. Excuse me, Doug Nelson.
20 Q. So you corrected your testimony, it's Doug
21 Nelson rather than Doug Hall.
22 A. Yes.
23 Q. How did you communicate with Mr. Nelson, was
24 that face to face or telephone conversation?
25 A. Both.

1 Q. And did you understand the reason for the
2 affidavit?
3 A. Yes, I did.
4 Q. What was the reason that you understood?
5 A. We wanted to get the facts as I remembered
6 them into an affidavit so that we would have them
7 committed on paper.
8 Q. So going back to the time that you first met
9 with Mr. Morrison, that would have been in April of
10 2006?
11 A. That's correct.
12 Q. Now, the date you have in your affidavit is
13 April 21, 2006.
14 A. Yes.
15 Q. Could you tell me what precipitated the
16 meeting with Mr. Morrison?
17 A. Pam Wake had called and had explained Dustin's
18 project to me and wanted to know if I would have an
19 interest in taking a look at it, and I said sure, and
20 went to the Key Bank building and we met and Dustin gave
21 me his presentation.
22 Q. Had you been acquainted with Pam Wake before
23 this?
24 A. Yes.
25 Q. How were you acquainted with her?

1 A. Her and I had been talking about loan
2 opportunities in the Pocatello area.
3 Q. What did you tell her about the loan
4 opportunities in the Pocatello area?
5 A. Just asked her if there was some business that
6 she was aware of, that she would let me have a chance to
7 look at them.
8 Q. What did you understand her position to be?
9 A. She was a loan broker.
10 Q. Had you done any business with her prior to
11 April 21, 2006?
12 A. She was a bank customer, also.
13 Q. Did you do any business with her in her
14 capacity as a loan broker?
15 A. Not that I can recall.
16 Q. So this would have been the first transaction
17 that you were involved with Pam Wake in a --
18 A. I can't say for sure. There might have been
19 some others that we worked on and different things. I
20 know that she had presented several packages to me at
21 different times. I can't remember whether it was after
22 this or prior to this.
23 Q. Directing you to the meeting with Mr. Morrison
24 on the 21st of April of 2006, do you recall who was
25 present at that meeting?

1 A. I know Pam was; there was some other gal
2 there, and Dustin and some other gentleman that was
3 there.

4 Q. You don't remember the names of the other
5 people?

6 A. I don't. My affidavit says Donna, I do
7 remember that name, and Andrew, but I don't remember it
8 now.

9 Q. So you believe that the other individual was
10 named Andrew?

11 A. I believe so, yes.

12 Q. When you first met with Mr. Morrison, what was
13 the nature of the meeting?

14 A. He gave his pitch on the subdivision that he
15 was trying to develop in Southern Hills, talked about
16 what he wanted to do there, how he was going to develop
17 the houses; you know, just gave me general information
18 about his project. And then wanted to know --

19 Q. Did you receive any documentary information at
20 that first meeting?

21 A. I received a binder that had tax returns,
22 financial statements, an appraisal of the property,
23 projected sales and other information; it was a fairly
24 thick binder.

5 Q. Once you received that information and had

1 that first meeting with Mr. Morrison, what was your
2 understanding of who the borrower would be?

3 A. It was my understanding that it was to be
4 Jefferson Enterprises.

5 Q. And how did you come to that understanding?

6 A. That's what he told me in the meeting.

7 Q. And in that meeting did you discuss with Mr.
8 Morrison the nature of his business?

9 A. Yes.

10 Q. Did you determine whether or not he had other
11 business entities that he owned an interest in?

12 A. Not at that point in time, until after I had
13 reviewed the binder.

14 Q. Was there any urgency expressed to you by Mr.
15 Morrison on the timing of this loan?

16 A. Yes.

17 Q. And what was the reason for the urgency?

18 A. He had until a certain date to get the loan to
19 pay off the property or he would lose the property.

20 Q. Did he give you documentation showing or
21 verifying that information?

22 A. No.

23 Q. Did you ever obtain information verifying that
24 information?

25 A. I believe that we obtained a sales contract.

1 Q. And was it in fact correct that there was a
2 limited time to exercise an option to purchase the
3 property?

4 A. It was a little bit confusing, if I remember
5 right, because there had been several extensions to that
6 document.

7 Q. Did you determine what day the option would
8 expire?

9 A. If I remember right, it was May 10, yes.

10 Q. So you had been working for the bank February,
11 March, and 21 days in April when you first met with --

12 A. Yes.

13 Q. What was your role, then, as a vice president
14 and loan officer, what things did you do?

15 A. Help me understand that a little more.

16 Q. Let's back up a little bit. What type of
17 training did you get from the bank on commercial loans?

18 A. The bank put me through a six-week training
19 course at Idaho Falls before I ever went to American
20 Falls.

21 Q. Was that a formal training course?

22 A. Yes, it was.

23 Q. Who was your instructor or instructors?

24 A. I can't remember her name.

25 Q. In that process were you instructed on the

1 policies and procedures of the bank in regard to
2 commercial loans?

3 A. Yes.

4 Q. And in your prior experience had you ever been
5 a commercial loan officer?

6 A. Yes.

7 Q. What particular experience, prior experience
8 had you had as a commercial loan officer?

9 A. I worked with American National Bank as a
10 commercial, I handled commercial loans there, and then
11 at Farm Credit I handled ag loans, which are considered
12 commercial loans.

13 Q. Was the procedure that you were instructed on
14 by Bank of Commerce similar to or substantially the same
15 as your prior practice?

16 A. Yes.

17 Q. Did the bank give you full authority to
18 negotiate commercial loans?

19 A. No.

20 Q. What was the limit of your authority?

21 A. \$50,000.

22 Q. So anything over \$50,000 would have to have
23 the approval of whom?

24 A. The next level of approval was the credit
25 manager, and that went to \$250,000. Anything above

1 \$250,000 had to go to the board of directors.

2 Q. At the first meeting with Mr. Morrison, did
3 you treat his presentation and the documents that he
4 presented you as a loan application?

5 A. Yes.

6 Q. So once you had received that documentation
7 and treated it as a loan application, what next did you
8 do?

9 A. I took the tax returns, prepared them, put
10 them in a format that the bank requires for a loan
11 presentation. We pulled the credit report, we did the
12 preliminary title research. There was some work that
13 had to be done with the appraisal because the appraisal
14 was in D.L. Evans Bank's name, we talked to the
15 appraiser about the value of the property.

16 Q. You contacted the appraiser?

17 A. Yes.

18 Q. What questions did you have for the appraiser
19 about the property?

20 A. The questions were more related to could we
21 switch the appraisal that was in D.L. Evans Bank to get
22 it to Bank of Commerce.

23 Q. Yesterday we did a deposition and these
24 exhibits were attached to that deposition, not attached
25 but were used in that deposition. I am handing you what

1 could get it moved from D.L. Evans to Bank of Commerce
2 and if D.L. Evans would release that and how we would go
3 about doing that.

4 Q. What was the net result of the conversation?

5 A. Kim was very helpful, as far as I recall, and
6 helped me to talk to Free and Associates and get the
7 appraisal assigned to the Bank of Commerce.

8 Q. Do you recall a timeframe of when that was
9 accomplished?

10 A. No, I don't.

11 Q. Was it fairly soon after the April 21 meeting?

12 A. Yes; it had to be because of the deadline.

13 Q. And you already made a comment relating to the
14 volume of this paper and the appraisal. Did you make a
15 thorough review of the appraisal at the time?

16 A. Yes, I did.

17 Q. What things were you looking for when you
18 reviewed the appraisal?

19 A. I was looking for what Free and Associates
20 thought the value of the property was, what they had
21 used for their comparable sales; normal things that we
22 go through an appraisal and look at.

23 Q. When you talked with Kim Webber, had you
24 determined whether or not D.L. Evans Bank had made a
25 commitment for financing?

1 has been marked previously as Exhibit No. 3 and I would
2 ask you to take a quick look at that, if you would.

3 A. A quick look at this?

4 Q. Sure.

5 A. It's an appraisal.

6 Q. And looking at that appraisal, is that the
7 appraisal that you were presented I suppose on the 21st
8 of April of 2006?

9 A. As far as I can recall, yes.

10 Q. And if you look at the cover page of that, it
11 does indicate that it was prepared for D.L. Evans Bank?

12 A. Yes.

13 Q. Once you received this document and this
14 appraisal, did you contact D.L. Evans Bank?

15 A. Not that I recall.

16 Q. You said that you had to do some things to get
17 the appraisal released by D.L. Evans Bank. What did you
18 do?

19 A. No, I did talk to Kim at D.L. Evans.

20 Q. And Kim --

21 A. Kim Webber, who was the loan officer that this
22 appraisal had been done.

23 Q. What was the substance of that conversation,
24 as best you recall?

25 A. Basically what I talked to him about is how we

1 A. Dustin had informed me at our meeting on the
2 21st that D.L. Evans had chose not to go with the loan
3 package.

4 Q. Was there any discussion with Kim Webber of
5 why D.L. Evans Bank had chosen not to go with the loan
6 package?

7 A. Not that I can recall.

8 Q. So back to the review of the appraisal itself,
9 did you call anyone at Free and Associates to clarify
10 any information that was in the appraisal?

11 A. Yes.

12 Q. And who did you talk to at Free and
13 Associates?

14 A. I believe that I talked to Gary or Roland,
15 actually both of them.

16 Q. Were you familiar with Free and Associates?

17 A. Up to this point in time, no.

18 Q. So you called and talked with Gary, is that
19 Gary Free?

20 A. Gary Free, and Roland Robinson.

21 Q. What was the purpose of your call and
22 discussion with those individuals?

23 A. Questions about the comparable sales, the
24 values, how they arrived at them, what their confidence
25 level was, what the market was, were there going to be

1 any changes to the appraised value, had the value gone
2 down or up.

3 Q. And you were satisfied, I suppose, with their
4 explanations?

5 A. Yes.

6 Q. Was that considered as part of the loan
7 application?

8 A. For Dustin or for the bank?

9 Q. For Dustin or Jefferson Enterprises.

10 A. He had given it as part of the package, yes.

11 Q. When you went through your training with Bank
12 of Commerce, was there any procedure established for a
13 formal, obtaining a formal loan application on a
14 commercial loan?

15 A. No.

16 Q. What was the customary practice that you were
17 trained on with Bank of Commerce with commercial loans
18 as far as the application process?

19 A. The first thing that we always did is obtain
20 three years of tax returns, a financial statement, a
21 release so that we could pull their credit, an
22 authorization for release of credit; and with this kind
23 of property, any appraisal, if he has other enterprises,
24 other businesses, financial statements for that. That
25 comprises the loan application.

1 Q. Did you obtain those items from Mr. Morrison?

2 A. Yes.

3 Q. And do you recall what other business entities
4 were involved with his operations?

5 A. Not off the top of my head. I mean we can go
6 through and look, but not off the top of my head.

7 Q. I am referring you to Deposition Exhibit, a
8 number of documents following the heading of Deposition
9 Exhibit No. 6, and it has a Bates stamp at the bottom
10 that's BOC 000801, and have you found that particular
11 page?

12 A. Yes.

13 Q. Is this a document that you prepared?

14 A. Yes.

15 Q. And could you tell me what it is?

16 A. It's a loan committee and loan report sheet.
17 This is what we prepared to send up to the credit
18 committee for review prior to the board meetings.

19 Q. And there is a date of May 2, 2006?

20 A. That's correct.

21 Q. And did you prepare it on that date?

22 A. I probably prepared it before.

23 Q. But that's the date that shows on the document
24 itself?

25 A. That's the date of the loan committee.

1 Q. Oh, I see. So this may have been prepared
2 sometime in April even?

3 A. Probably not; it was probably -- it could have
4 been prepared the end of April or the first of May.

5 Q. Sometime between the 21st of April and the 2nd
6 of May anyway.

7 A. Yes, that's correct.

8 Q. So that's a rather abbreviated time period.
9 What information had you gathered by the time you made
10 this loan committee report?

11 A. I gathered tax returns, financial statements,
12 the appraisal, credit report.

13 Q. Had you prepared this customer analysis at
14 that time that's on Page 803?

15 A. As far as I can recall, yes.

16 Q. These documents were produced by the Bank of
17 Commerce and I just copied them as I received them, so
18 there is -- it appears that there is a financial
19 statement of some type that is the next page, which
20 would be Page 804, and then a continuation of the
21 customer analysis on Page 805?

22 A. Yes.

23 Q. Did you also have at the time you made this
24 report the financial information that's on the one
25 sheet, and I am not sure what that is called. Maybe you

1 can tell me what it is.

2 A. On 804?

3 Q. Right.

4 A. Yes, that's what I had consolidated from
5 Dustin's financial information that he had given to me.

6 Q. And there is --

7 A. That's a year end statement that he had
8 prepared by his accountant, it looks like. And I moved
9 it over to the Bank of Commerce forms.

10 Q. Is this a Bank of Commerce form here?

11 A. Yes.

12 Q. And at the top it says, for the name of the
13 persons, Dustin Morrison and Sonya Kidd, and then it has
14 another name that just says combined entity financial
15 statement.

16 A. Yes.

17 Q. So this is a compilation of the various
18 entities that Mr. Morrison was involved with?

19 A. Yes.

20 Q. And it's a compilation that you prepared based
21 upon a financial statement from the accountant or
22 financial statements from Mr. Morrison's accountant?

23 A. Yes.

24 Q. Did you talk at all with Mr. Morrison's
25 accountant?

1 A. No, not that I recall.
 2 Q. So this document itself would be your work
 3 based upon the information Mr. Morrison provided.
 4 A. Yes.
 5 Q. Did anyone else at the bank have any input
 6 into the preparation of this document?
 7 A. No.
 8 Q. Were there other documents that you prepared
 9 as part of the loan application?
 10 A. Yes.
 11 Q. What other documents would have been prepared?
 12 A. Some kind of consolidated income statement,
 13 spread sheet of the tax returns.
 14 Q. If you would look at Page 811.
 15 A. Yes.
 16 Q. What is that particular document?
 17 A. If I remember right, this is the loan closing
 18 document, a checklist that we used at the Bank of
 19 Commerce to close, close loans, to prepare the final
 20 loan documents and make sure that we hadn't missed
 21 anything.
 22 Q. There is some handwriting in that particular
 23 document. Is that your handwriting?
 24 A. Some of it is; some of it is probably the loan
 25 secretary with the loan number.

1 Q. What writing could you identify as being
 2 yours?
 3 A. The loan at the top that's got the date and
 4 the borrower and my signature, and then an assignment
 5 letter.
 6 Q. And do you recall what the notation of the
 7 assignment letter referred to?
 8 A. No, not for sure.
 9 Q. What other documents would you have obtained
 10 from the time that you met Mr. Morrison and you said you
 11 got his financial statements, tax returns, and other
 12 items at the first meeting, what other items or other
 13 information did you find necessary for the loan
 14 application?
 15 A. We had a credit report that we would have
 16 pulled. And then also a preliminary title commitment.
 17 Q. Do you recall who you had do the preliminary
 18 title commitment?
 19 A. First American Title.
 20 Q. Do you recall when you received that
 21 commitment?
 22 A. No, I don't.
 23 Q. When you received the commitment, who would
 24 have reviewed the commitment?
 25 A. I would have reviewed it and -- well, the loan

1 committee and the board of directors look at the title
 2 commitments as part of the loan package.
 3 Q. You only had the \$50,000 limit on your credit
 4 approval ability, so was there any other particular
 5 officer of the bank that was working with you on this
 6 loan?
 7 A. Ron Crystal was working with me. He was the
 8 credit manager at that time.
 9 Q. And knowing what your limits were as far as
 10 loan approval and the process of the bank or procedures
 11 of the bank, was it necessary to have any other
 12 approvals than yours and Mr. Crystal's for this loan?
 13 A. Yes, the board of directors had to approve
 14 this loan.
 15 Q. What was the process of getting the approval
 16 from the board of directors?
 17 A. We submitted the -- I submitted the loan
 18 package to Ron Crystal and the loan committee, which was
 19 made up of loan officers, the bank president, the
 20 committee that was designated. They reviewed all of the
 21 documents to ensure that they were put together right,
 22 that everything was there that they needed to make a
 23 presentation to the board of directors. That committee
 24 always met before the board of directors meeting, you
 25 know, the day before or prior days before, depending on

1 the workload. And they reviewed the loan documents.
 2 And from there the loans that were approved to
 3 go to the board of directors then were submitted, and
 4 the loan officer was responsible to go to the board
 5 meeting at the board of directors, present the loan
 6 package, answer any questions, give his recommendation,
 7 and then the board of directors voted on those loan
 8 packages.
 9 Q. So that's the pre-review committee that you
 10 are talking about, the first committee that you talked
 11 with?
 12 A. Yes.
 13 Q. And can you tell me if you recall who the
 14 members of that committee were that reviewed this loan
 15 package?
 16 A. I can remember two, but beyond that I don't
 17 remember.
 18 Q. And the two that you recall are whom?
 19 A. Ron Crystal and Tom Romrell.
 20 Q. Were there others that were there reviewing it
 21 that you just don't recall their names?
 22 A. Yes.
 23 Q. Do you know the number of people that would
 24 have reviewed?
 25 A. It could have been as high as six others; I

1 think Chet Dance was there, Mike Morrison, Noland, I
2 don't remember Noland's last name, and that was who made
3 up the loan review committee.

4 Q. In the period of time that you had been
5 working for the Bank of Commerce from February through
6 May, I suppose at that time, had you presented any other
7 commercial loans to the pre-review committee?

8 A. I would say yes, I did.

9 Q. Do you recall how many you would have
10 presented?

11 A. No, I don't.

12 Q. Had you presented any loans that were of the
13 size of this loan?

14 A. Possibly, I had a couple of ag loans that were
15 very big. And there was one other loan that I presented
16 that was larger than this one.

17 Q. What did that involve?

18 A. It involved a local business.

19 Q. A local business in what locality?

20 A. In American Falls.

21 Q. Do you recall whether or not that loan was
22 approved?

23 A. No, it wasn't.

24 Q. Were any of the other loans that you submitted
25 for approval prior to the Jefferson Enterprises loan

1 commitment from First American Title there was some --

2 Q. Was there discussion at that time from when
3 you received the commitment?

4 A. Yes.

5 Q. So preceding the -- was Mr. Morrison aware
6 that there would be the pre-review committee meeting to
7 discuss this loan?

8 A. I don't know whether he was made aware of that
9 or not.

10 Q. At the time that you made the presentation to
11 the pre-review committee, what was the amount being
12 requested by Dustin Morrison and Jefferson Enterprises
13 for the loan?

14 A. According to the loan document that was
15 submitted to the committee, \$2.8 million.

16 Q. Had you ever seen a breakdown from Mr.
17 Morrison of why he was requesting \$2.8 million?

18 A. No, not that I can recall.

19 Q. Had you ever discussed with Mr. Morrison an
20 increment of the 2.8 million that he was wanting to be
21 reimbursed for predevelopment expenses?

22 A. Not that I can recall.

23 Q. Was there any discussion with Mr. Morrison
24 about any pre-existing mortgages on the property?

25 A. Yes.

1 approved by the Bank of Commerce?

2 A. I believe so, yes.

3 Q. Did Mr. Morrison present you with additional
4 information on what his loan request was prior to your
5 meeting with the pre-review committee?

6 A. We had had ongoing conversations prior to
7 that, yes.

8 Q. And were there other documents that were
9 supplied to you?

10 A. I can't remember.

11 Q. Is it possible there could have been other
12 documents?

13 A. It could be possible, yes.

14 Q. Would it be fair to say that Mr. Morrison had
15 a fairly substantial amount of documentation supporting
16 his presentation?

17 A. Oh, yes.

18 Q. Were you in contact with Mr. Morrison prior to
19 the presentation of this loan to the pre-review
20 committee?

1 A. Yes.

22 Q. And when would that contact have been made
23 with Mr. Morrison?

24 A. Well, we were having phone conversations
25 regularly. When I received the preliminary title

1 Q. When did those discussions take place?

2 A. At the first meeting that we had on the 21st
3 and then again at the First American Title.

4 Q. You met with him at First American Title?

5 A. Yes.

6 Q. What day would that have been, do you recall?

7 A. May 3.

8 Q. So a few days prior to the pre-review
9 committee.

10 A. Yes.

11 Q. So were there any documents produced by Mr.
12 Morrison, to your recollection, after that meeting with
13 First American Title?

14 A. Not that I can recollect.

15 Q. There could have been?

16 A. I don't know what documents he could have
17 presented to us.

18 Q. In looking at the package, and I know it's
19 spread along all these documents because of the way that
20 we obtained them and the way I have put them together,
21 was there anything in the documentation that you had
22 that set out the parameters of the request for
23 financing?

24 A. I guess I am not understanding what you are
25 asking me there. You mean --

1 Q. Well, why did Jefferson Enterprises want to
2 borrow \$2.8 million and how was it going to be expended?
3 Was there anything in the documentation that you are
4 aware of that presented that information?

5 A. Well, let me take a second and look and see if
6 I can remember.

7 MR. LARSON: Let's go off the record here for
8 a minute.

9 (Discussion off the record.)

10 MR. LARSON: Let's go back on the record.

11 Q. Mr. Worton, you have looked through the other
12 documents. Is there anything that you could find -- and
13 I'll recognize that you haven't looked through every
14 document that was there, but did you find anything that
15 explained the amount of the request and how it was to be
16 applied?

17 A. Under the loan committee report, which is 801,
18 collateral or guarantees, it explains what the
19 collateral and the guarantees were. If you go to the
20 narrative, which is 803, under the comments section it
21 outlines what the loan request is for, 500,000 will come
22 from loan proceeds and set in the bank as a CD as
23 security to pay the monthly interest obligation, and the
24 other 2.3 million would go to buy the property, and then
25 there would have been some closing costs associated with

1 that.

2 Q. Is there anything in this information that
3 tells you how much money was needed to purchase the real
4 property?

5 A. Not specifically, but if you look through
6 there and do the math, 2.8 million less 500,000 is 2.3.

7 Q. So what was that to purchase?

8 A. It was to purchase -- well, I don't know what
9 he called it, but it was to purchase the property out
10 across from the high school, Century High School.

11 Q. All of the property?

12 A. Yes.

13 Q. Are you familiar with the reference to the
14 Mike Wood property?

15 A. Which one would that have been? I'm not
16 familiar with --

17 Q. You don't recall that there were two parcels
18 involved in the transaction?

19 A. Yes, I do.

20 Q. And how did you view those parcels or how did
21 you designate those?

22 A. I don't know that I did designate them in any
23 of the loan documents. I was looking at the whole
24 package, I mean the property, the 365 acres that were
25 part of the appraisal.

1 Q. So you had reviewed the appraisal and knew
2 that there were two parcels.

3 A. Yes.

4 Q. Do you recall if one of the parcels was
5 referred to as the 80 Acres, Inc., parcel?

6 A. After reading through the documents here, yes,
7 I do remember that now.

8 Q. And that was information provided to you as
9 part of the loan application?

10 A. Yes.

11 Q. And do you recall whether or not the other
12 parcel was referred to as the Mike Wood parcel?

13 A. It could have been, yes.

14 Q. Which of the two parcels was there a problem
15 with getting it purchased?

16 A. The Mike Wood's parcel.

17 Q. And, as you recall, the deadline for the
18 purchase was May 10, 2006?

19 A. As I recall, yes.

20 Q. So back to the procedure, you had prepared
21 some financial summaries for the pre-review committee?

22 A. Yes -- can we stop for a second? I need to
23 look at the appraisal again, if I could, please.

24 (Appraisal handed to the witness.)

25 MR. LARSON: Let's go off the record.

1 (Discussion off the record.)

2 MR. LARSON: Back on the record.

3 Q. Mr. Worton, we were talking about the
4 information that was provided you on how the loan was to
5 be broken down and paid out and you had asked to look
6 for some other documentation in the exhibits. What
7 other documentation were you looking for and what was
8 its purpose?

9 A. Preliminary title commitment.

10 Q. And did you locate that?

11 A. Yes, I did.

12 Q. And why were you looking for the preliminary
13 title commitment?

14 A. To look at the total amount of acreage that
15 was involved.

16 Q. And if I could refer you to Page 896, Bates
17 stamp BOC 896.

18 A. Yes.

19 Q. Are you at that page?

20 A. Yes, I am.

21 Q. What does that appear to be?

22 A. It's a preliminary title commitment.

23 Q. And that's for this particular property?

24 A. Yes.

25 Q. On the document itself there is some

1 handwritten notes, do you see those?

2 A. Yes, I do.

3 Q. Do you know who put those handwritten notes on
4 the document?

5 A. I can recognize my handwriting in the upper
6 left-hand corner.

7 Q. What does it say?

8 A. It says reviewed 5/5/06.

9 Q. So you had obtained this commitment and that's
10 the date that it was reviewed?

11 A. Yes.

12 Q. Do you know what the effective date of the
13 commitment would have been?

14 A. April 26, 2006.

15 Q. So you ordered the commitment, apparently it
16 was prepared on or about April 26, 2006?

17 A. Yes.

18 Q. And your first review of it was on May 5,
19 2006?

20 A. Yes.

21 MR. LARSON: Let's take a quick break.

22 (Short recess.)

23 MR. LARSON: Back on the record.

24 Q. So you obtained this preliminary title
5 commitment. Maybe just to put things in context of time

1 now, you are looking at the calendar, when would you
2 have ordered the commitment?

3 A. Somewhere between the 21st of April and when
4 it was issued.

5 Q. What day of the week was the 21st of April?

6 A. That was a Friday.

7 Q. And you reviewed it on the 5th of May, and
8 what day of the week would that have been?

9 A. That was a Friday.

10 Q. And back to the document itself, go to the
11 next page, which would be the Bates No. 897.

12 A. Okay.

13 Q. Does that refresh your memory as to how the
14 loan proceeds were to be broken down?

15 A. No.

16 Q. There is some handwriting on that particular
17 page as well. Do you see that?

18 A. Yes.

19 Q. Do you know if that's your handwriting?

20 A. No, I don't recognize it as being my
1 handwriting.

22 Q. What was the total amount of the loan shown on
23 the commitment, what was the amount of the loan, how
24 much was the commitment for insurance on the loan?

25 A. Well, the loan policy is for \$2.8 million.

1 Q. If you would go to Page 904, is that also a
2 part of the commitment?

3 A. Yes.

4 Q. And on that Page 904, would that be exceptions
5 to title?

6 A. Yes.

7 Q. And there is handwriting on that particular
8 page as well?

9 A. Yes.

10 Q. Do you recognize the handwriting?

11 A. Yes, I do.

12 Q. And whose handwriting is that?

13 A. Most of it is mine except for possibly one I
14 don't recognize as being mine.

15 Q. Which one don't you recognize as being yours?

16 A. The "removed."

17 Q. Would those other handwritten notes have been
18 your notes that you made as you reviewed the document?

19 A. Yes.

20 Q. If you would go to Page 906, there is a blank
21 page in between with nothing on it, but 906, is there
22 handwriting on that page as well?

23 A. Yes.

24 Q. Is this a continuation of the exceptions to
25 title?

1 A. Yes.

2 Q. What writing on that page do you recognize?

3 A. All of it.

4 Q. And whose writing is it?

5 A. It's mine.

6 Q. And Item No. 21 there is a designation and a
7 handwritten note there. What does that refer to?

8 A. It's a warranty deed recording that was
9 reserved for 50 percent oil and mineral rights.

10 Q. There is some writing by Exception No. 22.
11 What does that refer to?

12 A. Provisions of a warranty deed tied to some
13 irrigation pipe.

14 Q. And No. 23, what did that refer to?

15 A. Mortgage that was dated for the dollar amount
16 dealing with 80 Acres, Inc.

17 Q. And then there is some other notes on the page
18 by 26. That's your handwriting?

19 A. Yes.

20 Q. And what does that refer to?

21 A. The Mike Wood's contract.

22 Q. And then below that there is something else
23 that is written. Can you read that?

24 A. May remove.

25 Q. Do you know what that is referring to?

1 A. Not for sure.
 2 Q. There is additional writing, one says pay off
 3 D.L. Evans Bank with a question mark?
 4 A. Yes.
 5 Q. Why is that on there?
 6 A. Those were questions that I had in my mind
 7 what was going on in the transaction for sure.
 8 Q. And there is another handwritten statement
 9 that says pay off Randy Budge for Mike Wood?
 10 A. Yes.
 11 Q. Why was that notation made on the commitment?
 12 A. I don't remember.
 13 Q. So this was your review as of the 5th of May
 14 2006 and you used that information I suppose as part of
 15 the presentation of the pre-review committee?
 16 A. Yes.
 17 Q. Did the pre-review committee receive a copy of
 18 the title commitment?
 19 A. Normal procedure for the bank is that we send
 20 in the first page, because some of the title commitments
 21 would get pretty bulky, as well as tax returns, so for
 22 the board of directors and the loan committee to review
 23 them, we tried to condense them as much as we could. So
 24 I don't know if the whole title commitment to this was
 25 sent off to the loan review committee or if just the

1 exception pages were.
 2 Q. Do you recall whether or not this mortgage
 3 that's shown as Exception 24 for \$177,000 to D.L. Evans
 4 Bank was paid from the proceeds of the loan?
 5 A. I don't recall. If we want to take a minute,
 6 we can go through the settlement sheet.
 7 Q. Let's hold off on that just for a minute. And
 8 I am assuming that 24 and 25 are the same thing, just a
 9 modification of the terms, those two exceptions refer to
 10 the same indebtedness?
 11 A. Could very well be, yes.
 12 Q. Were you aware of any interest that a
 13 corporation could have had by the name of Black Cliffs
 14 Development?
 15 A. Yes.
 16 Q. What was your recollection of that interest
 17 that Black Cliffs had?
 18 A. That was Mike Wood's deal.
 19 Q. Was there any request for that to be
 20 subordinated or changed or anything of that nature?
 21 A. I don't remember.
 22 Q. Do you remember what kind of interest that
 23 was?
 24 A. Not for sure.
 25 Q. Going back to I believe it's 803 in the other

1 volume.
 2 A. Okay.
 3 Q. When you went to the pre-review committee,
 4 what was the amount of the loan that you were asking to
 5 be approved?
 6 A. \$2.8 million.
 7 Q. And you made a presentation to the pre-review
 8 committee for that amount?
 9 A. We don't make the presentation. Our documents
 10 are just sent up and they review it.
 11 Q. So it was reviewed by the pre-review
 12 committee.
 13 A. Yes.
 14 Q. What was the resolution made by the pre-review
 15 committee?
 16 A. The pre-review committee submitted the loan
 17 request as we had requested it, \$2.8 million.
 18 Q. When that was submitted for final review, did
 19 you have any communication with Mr. Morrison about how
 20 the proceeds of the loan would be distributed?
 21 A. No.
 22 Q. Is there any information that you had that
 23 would show or direct how the proceeds of the loan would
 24 have been distributed had it been approved at \$2.8
 25 million?

1 A. Not that I see in the paperwork here.
 2 Q. In the preparation of this customer analysis
 3 you talked about comments generally, and that's the
 4 amount of the loan request, and it doesn't appear that
 5 there was any amount in that loan to cover the
 6 obligation to D.L. Evans Bank. Is that a correct
 7 interpretation?
 8 A. Possibly.
 9 Q. And where is the possibly?
 10 A. Well, give me a second to go back to the title
 11 commitment.
 12 Q. Sure, go ahead, I don't want to put words in
 13 your mouth.
 14 (Pause in proceedings.)
 15 A. Okay.
 16 Q. I believe the question was whether or not you
 17 knew if the D.L. Evans mortgage amount was paid from the
 18 proceeds of the loan.
 19 A. Yes.
 20 Q. And how did you determine that?
 21 A. Looking at First American Title settlement
 22 statement, there is a line item for \$188,948.75.
 23 Q. What page is that?
 24 A. It's not at the bottom.
 25 Q. It's there but --

1 A. Okay, 816.
 2 Q. What's the amount of the loan proceeds?
 3 A. \$2,223,805.
 4 Q. I just want to make this clear, there are two
 5 closing statements. There is one that shows a
 6 settlement with Michael R. Wood.
 7 A. Yes.
 8 Q. Does that show the amount that went to Michael
 9 R. Wood?
 10 A. Yes.
 11 Q. How much was paid to Michael R. Wood?
 12 A. \$2,100,000 plus \$731,000 in interest and
 13 \$388 -- no, not the 731 -- \$2,100,000 to Michael Wood.
 14 Q. So there was a balance of the loan of
 15 \$125,000 -- excuse me, would you do the math on that for
 16 me. What was the balance of the amount of the loan that
 17 was available for payment of obligation at the closing?
 18 A. \$2,223,805.
 19 Q. And so \$2,100,000 even went to Michael R.
 20 Wood?
 21 A. That's correct.
 22 Q. What was the balance available from the loan
 23 for payment of other debts?
 24 A. \$123,805.
 25 Q. So of that amount that was left how much was

1 available for the payment of the D.L. Evans'
 2 indebtedness?
 3 A. Well, there would be \$123,805.
 4 Q. Were there other charges that went to the Bank
 5 of Commerce at the time of closing?
 6 A. Yes.
 7 Q. What would those amounts have been?
 8 A. Loan origination fee of 21,750.
 9 Q. That would have come out of the loan proceeds?
 10 A. Yes.
 11 Q. Were there other charges that came out of the
 12 loan proceeds?
 13 A. For the Bank of Commerce?
 14 Q. Yes.
 15 A. \$300 and \$250.
 16 Q. Were there other loan closing fees that were
 17 paid out of the loan?
 18 A. Yes.
 19 Q. So that would have reduced the amounts
 20 available for payment of the D.L. Evans' obligation?
 21 A. Yes.
 22 Q. Did the borrower, Jefferson Enterprises, bring
 23 in any additional money at the time of closing?
 24 A. Yes.
 25 Q. How much did they bring in?

1 A. According to this, \$755,707.
 2 Q. Excuse me, I missed your answer.
 3 A. Line 201 on the settlement statement,
 4 \$755,707.
 5 Q. Did you know the source of those funds?
 6 A. No, I didn't.
 7 Q. If we could go back now again to 803.
 8 A. Okay.
 9 Q. That's again your customer analysis?
 10 A. Yes.
 11 Q. So it's your testimony that some portion of
 12 the D.L. Evans loan was paid out of the proceeds of the
 13 loan made by Bank of Commerce?
 14 A. No.
 15 Q. Explain that.
 16 A. Well, all of the earnest money deposit that
 17 Dustin brought in, the Bank of Commerce, it all goes
 18 into one pot, and so for you to say, okay, there was
 19 only X number of dollars from Bank of Commerce, there is
 20 no way they could pay off the D.L. Evans' obligation,
 21 that's probably true if we are going to go dollar for
 22 dollar. But if you look at what was brought into the
 23 closing, cash, whatever, funds from Dustin and the loan,
 24 and then those were disbursed out, that's how D.L. Evans
 25 was paid.

1 Q. So with the pot of funds that were brought in
 2 there, it's really not segregated out what the
 3 additional loan proceeds were paid on.
 4 A. Right.
 5 Q. It may have been D.L. Evans, it may have been
 6 something else.
 7 A. Right.
 8 Q. But you don't have the information here and
 9 it's not shown in the closing statement as to how those
 10 funds were actually disbursed from the loan proceeds
 11 themselves?
 12 A. In the customer analysis, this is what was
 13 sent to the review committee and subsequently presented
 14 to the board of directors. Now, the board of directors,
 15 this is our recommendation as loan officers.
 16 Q. So just to summarize, you put this information
 17 together, you did the customer analysis, and we kind of
 18 jumped ahead of the timeframe when you were talking
 19 about the settlement because that's after the fact.
 20 A. That's correct, that's after the loan has been
 21 approved by the board of directors.
 22 Q. So as you went in to the board of directors
 23 with your customer analysis, it would have been based on
 24 the figures that you are referring to in that customer
 25 analysis?

1 A. Dustin's loan request was for \$2.8 million.
 2 Q. Going down through your customer analysis
 3 there is a part on capacity.
 4 A. Yes.
 5 Q. And there are some figures and different
 6 things that are numerical in that paragraph. Are those
 7 based on your calculations?
 8 A. Yes, as I recall.
 9 Q. How did you get the information for these
 10 calculations?
 11 A. From the information that Dustin provided me
 12 from the financial statements and tax returns.
 13 Q. And you show there is a positive cash flow of
 14 \$421,048?
 15 A. Yes.
 16 Q. And that was a calculation you made from the
 17 financial information?
 18 A. Yes.
 19 Q. And then it says debt service ration, and is
 20 that supposed to be ration?
 21 A. No, it's supposed to be ratio.
 22 Q. What does that show?
 23 A. It shows there is \$3.63 of cash available to
 24 service every dollar of debt.
 25 Q. So interest on the loan, monthly interest on

1 the loan was also projected in that paragraph?
 2 A. Yes.
 3 Q. And as you go on in the paragraph itself there
 4 is another ratio and what is that ratio?
 5 A. When you add the interest service of this loan
 6 into the ratio, it brought the ratio from 3.63 down to
 7 1.26.
 8 Q. And would you explain what that ratio is?
 9 A. I just did. It's \$1.26 available to service
 10 every dollar of debt.
 11 Q. And that's the change in the financial status
 12 of Morrison and his entities?
 13 A. Yes.
 14 Q. The next paragraph in the document is entitled
 15 capital.
 16 A. Yes.
 17 Q. And, again, there are some numerical figures
 18 in that paragraph. Were they arrived at by you, you
 19 prepared that paragraph?
 20 A. Yes.
 21 Q. It says the net worth of the applicants is 44
 22 percent?
 23 A. Yes, that's correct.
 24 Q. How was that determined?
 25 A. Assets minus liabilities.

1 Q. You go on to say that the bulk of the worth
 2 being the appraised value of the property that the bank
 3 will be taking as security.
 4 A. That's correct.
 5 Q. Now, do you know what number was used for that
 6 determination of net worth as far as the appraisal went?
 7 A. I can't really tell from the financial
 8 statement, there is a sticky over it.
 9 Q. Turn the page. Is that what you were looking
 10 at?
 11 A. Yes. \$7,350,000 was the 397 acres that we
 12 were looking at for this loan request.
 13 Q. So the total equity shown in the appraisal.
 14 A. That was what the value of the appraisal was
 15 as is.
 16 Q. So it's not the equity, it would be the total
 17 value of the property.
 18 A. Right. And then the debts are taken out on
 19 the other side.
 20 Q. So that would include the debt on the 80 Acres
 21 parcel.
 22 A. That's correct.
 23 Q. So that's where you came up with this 44
 24 percent net worth?
 25 A. Yes. You take the net worth of \$6,920,000

1 divided by 13 million 746, that should give you 44
 2 percent.
 3 Q. And you are referring to Page 804.
 4 A. That's correct.
 5 Q. And that's the combined entity financial
 6 statement.
 7 A. Yes.
 8 Q. And as we go on in that same paragraph there
 9 is a determination of working capital. Is that a
 10 determination that you made?
 11 A. Yes.
 12 Q. And how did you make that determination?
 13 A. Give me just a second to do the math here.
 14 (Pause in proceedings.)
 15 A. I took it from the financial statement with
 16 Exhibit 804 and it looks like with homes that are being
 17 built and would have been sold, deducted that out and
 18 came to the working capital ratio of 978,000.
 19 Q. And it goes on to say which gives a current
 20 ratio of 134 percent.
 21 A. That's correct.
 22 Q. And what does that mean, that 134 percent?
 23 A. Gee, if I had known I was going to have to do
 24 bank ratios, I would have brushed up a little bit.
 25 Oh, current ratio, let's see. It's current

1 assets and current liabilities, you divide those one by
2 the other and it gives you 134 percent. But we did some
3 fiddling here with this because in the houses that were
4 being built and under contract, there wasn't really
5 clear -- so that's why I removed those out, to give us a
6 true picture of that. Because if you look at the
7 financial statement, the current assets minus the
8 current liabilities is more than 978,000.

9 Q. So the 978,000 would be cash available, liquid
10 assets available?

11 A. No. No, because you have got deposits, which
12 wouldn't be -- you have got cash in the bank of 512, you
13 have got an accounts receivable, those is what we would
14 call current assets.

15 Q. So the working capital of 978,413 is derived
16 from what information?

17 A. The cash in banks, the accounts receivable and
18 this (indicating) was as of year end 2005. Some homes
19 had closed and there was some cash that had come back in
20 at that time.

21 Q. So the amount of the cash in the bank would
22 have been \$512,000?

23 A. As of the end of 2005.

24 Q. Did you know what that was at the time of this
25 loan presentation?

1 Q. When you made the presentation, was the bank
2 president present?

3 A. Yes, he was.

4 Q. Who would that have been?

5 A. Tom Romrell.

6 Q. What was the result of the presentation?

7 A. The loan was approved for \$2.2 million.

8 Q. Were there conditions attached to the approval
9 of the loan?

10 A. First mortgage on 385 acres.

11 Q. So that's on the 9th of May that that was the
12 determination made.

13 A. That's correct.

14 Q. Was that communicated to Jefferson Enterprises
15 and Dustin Morrison?

16 A. As far as I remember, the minute I got out of
17 the board meeting, I called him and told him what the
18 deal was.

19 Q. What was the substance of your conversation
20 with Mr. Morrison at that time?

21 A. I don't recall.

22 Q. How long did you talk with Mr. Morrison?

23 A. I don't recall that either.

24 Q. Were there any other conversations with Mr.
25 Morrison at that time?

1 A. Cash in the bank.

2 Q. But the amount?

3 A. I can't recall.

4 Q. So you are the person who did this calculation
5 and then you presented it to the board of directors?

6 A. To the loan committee and then to the board of
7 directors.

8 Q. Did you ever send any document to Jefferson
9 Enterprises or Mr. Morrison about the terms and
10 conditions of this proposal?

11 A. Not that I recall.

12 Q. Was that taken, then, to the board of
13 directors?

14 A. The loan package?

15 Q. Yes.

16 A. Yes.

17 Q. And when would that have gone to the board of
18 directors?

19 A. Tuesday morning, May 9, at 7:30.

20 Q. And you made the presentation?

21 A. Yes.

22 Q. Do you recall who was present at that meeting?

23 A. Bank board of directors, the credit manager,
24 the bank president and the board secretary and various
25 loan officers that had loan presentations that day.

1 A. Yes, we had, during that day we had

2 conversations throughout the afternoon and the evening.

3 Q. What were the substance of those
4 conversations?

5 A. That's when he informed me that he couldn't
6 get a subordination on the 80 Acres, Inc.

7 Q. Had you had any conversation with the lender
8 on the 80 Acres, Inc., parcel?

9 A. Not that I recall.

10 Q. Without the subordination of the 80 Acres
11 parcel, what was required of Jefferson Enterprises to
12 complete the loan?

13 A. I guess I don't understand what --

14 Q. In order for this transaction to close, what
15 would Jefferson Enterprises have had to do in regard to
16 the 80 Acres parcel?

17 A. Well, the loan request was submitted for 385
18 acres which included the 80 Acres, Inc., property. And
19 the loan request was for \$2.8 million. The board
20 subsequently said 2.2, but we were still to require a
21 first mortgage position on the 385 acres, which included
22 the 80 Acres, Inc.

23 Q. So couldn't be subordinated. How was it to be
24 taken care of?

25 A. Dustin had a couple of ideas. When I informed

1 him of the board decision, I was told that the 80 Acres,
2 Inc., would be subordinated. So it wasn't until Dustin
3 had this discussion with --

4 Q. Who had told you that?

5 A. Dustin had.

6 Q. When did he tell you those things?

7 A. He told me that at the first meeting on the
8 21st and again when we met at the title insurance
9 company.

10 Q. As part of the original appraisal you
11 reviewed -- I think you said you reviewed the appraisal
12 in some detail.

13 A. Yes.

14 Q. In that appraisal was there a significant
15 amount of financial information about those obligations,
16 including the 80 Acres obligation?

17 A. In the appraisal?

18 Q. In the appraisal.

19 A. I guess I'd have to look and see.

20 Q. Go ahead and take a minute.

21 (Pause in proceedings.)

22 A. Okay, what was your question?

23 (Record read.)

24 A. On Page 133 of the appraisal, it talks about
25 the history of the property, who they were purchased by,

1 what the purchase price was, what the payments were,
2 when the notes were due, and the total amount of acreage
3 that were involved in those obligations.

4 Q. And that's the information that you had
5 reviewed in your review of the loan application which
6 included this appraisal?

7 A. Yes. I reviewed the appraisal but I don't
8 specifically remember everything that I looked at in
9 there.

10 Q. Would it be fair to say that you had that
11 information available to you when you made the
12 evaluation on this loan?

13 A. Yes.

14 Q. When you had the discussions with Mr. Morrison
15 after the approval of the \$2.2 million loan, and there
16 was the discussion of the 80 Acres parcel, were you
17 aware, then, of the terms and conditions of the 80 Acres
18 loan financing?

19 A. Not that I recall.

20 Q. Was that discussed with you by Mr. Morrison at
21 the time?

22 A. Not that I recall.

23 Q. In the appraisal itself it showed that the
24 annual payments would be \$35,000 per year on that
25 obligation for a substantial time, I believe another

1 four years.

2 A. Yes, that's what the appraisal says.

3 Q. So at that time the requirement of the bank
4 was either get a subordination --

5 A. No. The requirement of the bank was a first
6 deed of trust on 385 acres. That was how the loan
7 package was presented, that's how it was represented to
8 me by Mr. Morrison, and that's how I represented it to
9 the loan committee and the board of directors.

10 Q. Based on a total amount of \$2.8 million.

11 A. That's correct.

12 Q. And that was your understanding when you made
13 those representations to the board of directors?

14 A. Yes.

15 Q. So after the approval and prior to the closing
16 there were conversations with Mr. Morrison?

17 A. Yes.

18 Q. Was the 80 Acres parcel discussed with him?

19 A. Yes.

20 Q. And what was, again, the substance of those
21 conversations in regard to what Mr. Morrison's
22 understanding was?

23 A. I don't --

24 Q. What did he say?

25 A. I can't remember, Bruce; that's quite a few

1 years ago.

2 Q. I understand that. Can you remember the
3 substance of what he said?

4 A. The substance was that he would go to work,
5 when I called him after the board meeting, and get the
6 subordination done. Then later on that evening he
7 called and said that they wouldn't subordinate the
8 property. What were we going to do.

9 Q. And what was the result of that conversation?

10 A. He suggested a couple of things, a couple of
11 scenarios that would make it work for him. One is that
12 he would put cash into the bank in a certificate of
13 deposit and hold there as additional security for the
14 loan until the board of directors could meet the
15 following week to approve a greater request. And the
16 other was that we take the 80 Acres, Inc., out of that
17 and only take 305 acres as security on the property.

18 Q. Was that presented to any other officers of
19 the bank?

20 A. Karen Hammond and I discussed it. She was the
21 branch manager for American Falls. The next morning on
22 the 10th we visited, called Tom Romrell, and went
23 through the scenarios and presented that Dustin had and
24 the loan was approved the way it was and that's what we
25 went ahead with. That was the decision that was made.

1 Q. Was there a request by Mr. Morrison for
2 additional loan amounts?

3 A. That was one of his requests at that time, is
4 that we increase the loan amount.

5 Q. Was that declined?

6 A. I don't know that it was declined; basically
7 what I was doing was we were going with what had been
8 approved by the board of directors.

9 Q. So on May 10, 2006, Jefferson Enterprises
10 either had to perform on the Mike Wood contract or lose
11 its ability to do that?

12 A. Yes.

13 Q. And you were aware that there would be no
14 further extensions of that option to purchase?

15 A. Option to purchase --

16 Q. The Mike Wood property.

17 A. At that time -- okay, what do you mean by
18 extension of option to purchase?

19 Q. Do you need to take a break for a minute? I
20 am kind of getting the sense that you are --

21 A. I am starting to get a little frustrated
22 because you are not being clear with me, Bruce, and you
23 are kind of putting words in my mouth.

24 Q. I will try to stop doing that. But do you
25 need to take a break?

1 A. Yes.

2 MR. LARSON: Let's go off the record.

3 (Short recess.)

4 MR. LARSON: Back on the record.

5 Q. I was looking at your affidavit and it says,
6 Paragraph 8, and in Paragraph 8 you said that you talked
7 with Mr. Morrison and you were talking about how to take
8 care of this problem with the 80 Acres obligation. Was
9 it your understanding at that time that if the 80 Acres
10 obligation was not either subordinated or satisfied,
11 that Mr. Morrison would not be able to perform on the
12 loan?

13 MR. TUCKER: Perform? When you say perform --

14 A. Close?

15 Q. Well, could he perform the conditions of the
16 loan? Excuse me, let's strike that. Perform the
17 conditions required in order to obtain the loan from the
18 bank.

19 A. Give the first --

20 Q. If he did not get a subordination of the 80
21 Acres parcel or pay off the 80 Acres parcel.

22 A. Up to that point in time I was lead to believe
23 that he could obtain the subordination of the 80 Acres,
24 Inc.

25 Q. Was there anything that you received in

1 writing that said that?

2 A. No, there wasn't.

3 Q. Did you receive a large binder from Mr.
4 Morrison at that first meeting?

5 A. Yes.

6 Q. Where is that large binder?

7 A. It's scattered throughout all the documents
8 here. There was tax returns, financial statements,
9 projections of house sales, all of that, and it was
10 taken apart and used as part of the loan package and
11 documentation in the file. The financial statements,
12 the tax returns.

13 Q. But physically the black binder itself was not
14 kept intact as far as what the requests being made by
15 Jefferson would have been?

16 A. The black binder did not specifically say the
17 request. If I remember right, the black binder dealt
18 with the development of the property, subdivision,
19 infrastructure, house costs, building, all of that,
20 which wasn't the purpose of this loan.

21 Q. The documents that are in these three binders
22 here, with the exception of the answers to
23 interrogatories and responses to requests for production
24 of documents, are the documents that I received from the
25 bank and our request for discovery of the entire loan

1 file. Were there documents in the black binder that did
2 not make it into the loan file?

3 A. Yes, very possibly.

4 Q. Where would those be?

5 A. I have no idea.

6 Q. Were they kept separately at the time that you
7 were the loan officer and managing this particular loan?

8 A. Yes.

9 Q. And you do recall the large black binder?

10 A. Yes.

11 Q. And it's still containing certain documents.

12 A. Yes.

13 Q. You haven't had a chance to review all of
14 these documents, so you don't know whether or not those
15 documents that were in the black binder would be in
16 these documents?

17 A. Very possibly, yes, just because I haven't had
18 a chance to review all the binders.

19 Q. But it's your recollection that the loan file
20 itself did not include all of those other documents?

21 A. That's correct.

22 (Deposition Exhibit No. 21 marked for
23 identification.)

24 Q. I have handed you what's been marked as
25 Deposition Exhibit No. 21, and I am going to ask you if

1 you have seen a copy of this document prior to today.

2 A. Yes, it was part of the binder.

3 Q. So the information contained in this
4 particular document was part of that binder?

5 A. Yes.

6 Q. And do you recall, if you look at the first
7 page, there was kind of a summary of expenses and the
8 makeup of the loan. Do you remember reviewing that when
9 the binder was presented to you?

10 A. Yes, I do.

11 Q. Under the double line in the middle of that,
12 and the designation is Page 23, but it's not a Bates
13 number, it's just the number in this document, 23 --

14 MR. TUCKER: I would just say that almost all
15 of those pages are marked 23.

16 MR. LARSON: Yes, they are. Thank you.

17 Q. Let's identify a little bit more clearly, just
18 the first page of the exhibit. And it would have
19 Deposition Exhibit No. 21, the sticker on it. Correct?

20 A. Yes.

21 Q. So you reviewed that information, and I guess
22 under the double line in the center there is some
23 remaining balance on land after \$2.8 million.

24 A. Yes.

25 Q. And it shows what appears to be a payment

1 A. No.

2 Q. And why not?

3 A. Because it would have fallen below what we
4 were using as the standard.

5 Q. And do you remember what the standard was at
6 that time?

7 A. I don't.

8 Q. When you had your conversation with Mr.
9 Morrison, I guess on the evening of the 9th, morning of
10 the 10th, I am sure there were a lot of conversations,
11 was that working capital amount discussed with you?

12 A. No, not that I recall.

13 Q. Did Mr. Morrison tell you where he was going
14 to get the money to close the loan?

15 A. No, he didn't.

16 Q. From your review of his financial information,
17 where was the most likely spot that he was going to get
18 the money?

19 A. Cash in the bank.

20 Q. And that was a significant portion of the
21 working capital that you had referenced in 803.

22 A. Yes.

23 MR. LARSON: Let's take a break.

24 (Short recess.)

25 MR. LARSON: Back on the record.

1 schedule?

2 A. Yes.

3 Q. Now, what do you understand or did you
4 understand that to refer to at the time that you
5 received the binder?

6 A. I have no idea.

7 Q. Would that correspond, do you believe, to the
8 80 Acres transaction?

9 A. Yes.

10 Q. And what's the basis of your belief?

11 A. Based on some of the other documents that we
12 have been reviewing today.

13 Q. So I want to go back again to 803 and I am
14 going to try to get wrapped up here so you can get out
15 before noon. Again, 803 is the customer analysis. And
16 if you look at the customer analysis, on those ratios,
17 how would they change in regard to working capital once
18 the 80 Acres parcel was paid?

19 A. They would be --

20 Q. Just generally.

21 A. It would have a negative effect on it.

22 Q. With that change would the requirements of the
23 bank as far as debt-to-asset ratio, would those
24 requirements have been met had that working capital
25 number changed?

1 Q. So I want to get this right, the approval of
2 the loan committee, which was the board of directors,
3 was based upon the financials that you had supplied at
4 that meeting.

5 A. Yes.

6 Q. On the 10th there are a number of
7 conversations with Mr. Morrison. Would you describe
8 those conversations as being frantic? That's my word, I
9 don't want to put that in your mouth. But what was the
10 character of those --

11 A. I can't remember.

12 Q. Was Mr. Morrison extremely concerned about
13 getting this taken care of?

14 A. Yes.

15 Q. Making numerous alternate proposals?

16 A. Yes.

17 Q. Did he discuss with you, to your recollection,
18 the effect on using his cash in the bank to pay off the
19 80 Acres parcel?

20 A. I can't remember.

21 Q. With your knowledge of his financials, did you
22 have an idea or would you have an opinion about the
23 effect on his working capital by using that cash in the
24 bank to pay off that 80 acres?

25 A. No, I wouldn't have an opinion.

1 Q. Would it be fair to say that it would have an
2 adverse effect on his working capital?

3 A. Yes.

4 Q. Did you ever make the statement to Mr.
5 Morrison that the bank did not want him to fail?

6 A. Not that I can remember.

7 Q. Did you continue to work with Mr. Morrison on
8 this project after the loan closed?

9 A. Yes.

10 Q. Did you have further conversations with Mr.
11 Morrison after the loan closed?

12 A. I checked in with him at different times to
13 see how he was doing with raising the money to advance
14 the project, to make it into the development.

15 Q. Was he able to meet the deadline on the loan,
16 pay off the loan?

17 A. No.

18 Q. Why not?

19 A. He wasn't able to find alternate financing or
20 funds to come in for the development, and that was the
21 whole purpose of it.

22 Q. Were additional funds loaned to Mr. Morrison
23 by the bank?

24 A. I have no idea.

25 Q. You weren't involved with any other lending

1 Q. Did you submit any other information to the
2 pre-review committee than the documentation that you
3 have testified to here today?

4 A. No.

5 Q. So the financial information that went from
6 you to the pre-review committee and your recommendations
7 stayed intact as it went to the board of directors?

8 A. Yes.

9 Q. And their approval was based upon the
10 information that you had put together with somehow from
11 Ron Crystal and the review committee's input, I suppose.

12 A. Yes. The only thing I took in to the board of
13 directors meeting was a map that Dustin had given me
14 that showed the subdivision that didn't go to the review
15 committee. And an easel.

16 Q. Why did you take that?

17 A. Just to give the board a vision of what Dustin
18 was going to try to achieve with this project.

19 Q. And I suppose based upon what you have seen
20 and that drawing, for instance, that you were impressed
21 with the idea?

22 A. Yes.

23 Q. Thought it was a good idea at the time?

24 A. In 2006, yes.

25 Q. So the approval of the loan didn't have

1 activity with Mr. Morrison?

2 A. I think we did an extension when the loan
3 came, and that was the last time that I was involved. I
4 made that presentation to the board.

5 Q. So through the tenure of your being the loan
6 officer, you got the loan documents from Mr. Morrison,
7 the requests, you presented it to the pre-review
8 committee, to the loan approval committee or the board
9 of directors, and that's almost exclusively your work;
10 correct?

11 A. Yes.

12 Q. But that was done in conjunction with other
13 officers of the bank?

14 A. Yes -- clarify yourself there.

15 Q. Up until the point you went to the pre-review
16 committee, were there other officers of the bank working
17 with you? You mentioned Ron Crystal at that point. Is
18 that correct or not?

19 A. Yes.

20 Q. At the pre-review committee you just submitted
21 your documents.

22 A. That's correct.

23 Q. Did you have any conversation with those
24 officers at that time?

25 A. I can't recall.

1 anything to do with the vision that was shown on the
2 easel with the board of directors?

3 A. No.

4 Q. But was based upon the financial information
5 that was supplied at that time.

6 A. Yes.

7 Q. And the board of directors in this short
8 period of time between their approval on the 9th and the
9 loan closing on the 10th had no opportunity to review
10 the loan itself to see if any of those numbers or
11 financials would have changed based on how the loan was
12 actually closed?

13 A. No.

14 Q. On the 9th had that working capital, if the
15 working capital amount was over \$700,000 less than what
16 was presented to the board, would you have recommended
17 the loan for approval?

18 A. No.

19 Q. And do you believe that the board would have
20 approved it with that change?

21 A. No.

22 MR. LARSON: That's all I have.

23 EXAMINATION

24 BY MR. TUCKER:

25 Q. Was this loan presented as a development loan

1 or a property purchase loan?

2 A. Property purchase loan.

3 Q. So in the review of that, was there any
4 representation made that the loan proceeds would be used
5 to develop the property?

6 A. No.

7 Q. So was the bank looking at this from a working
8 capital standpoint or the value of the assets
9 standpoint?

10 A. Value of the assets.

11 Q. Based on the appraisal that you reviewed, was
12 there substantial value, at least based on what the
13 appraisal said, in relation to the loan amount?

14 A. Yes.

15 Q. Just a couple quick questions on the amount
16 actually paid by Mr. Morrison. I think there was some
17 discussion that Mr. Morrison would have to come up with
18 \$700,000 and change at the closing. If you would look
19 at the settlement sheet which is, I think it's 822, the
20 actual dollars that Mr. Morrison or his entities would
21 have to come up with, how much does Line 303 state?

22 A. \$616,112.

23 Q. And then on Deposition Exhibit No. 896 was the
24 preliminary title commitment and I don't know if you
25 know, it's at least addressed to Racine Olson, which is

1 a law firm here in town and Mr. Randy Budge. Did you
2 actually request this commitment or did somebody else
3 request the commitment?

4 A. I believe this is the commitment that I
5 received from Dustin.

6 Q. So at some point he brought that to you.

7 A. That's correct.

8 MR. TUCKER: That's all I have.

9 RE-EXAMINATION

10 BY MR. LARSON:

11 Q. As I understand the bank's counsel's question
12 to you is talking about this being a bridge loan; is
13 that correct?

14 A. A land purchase loan.

15 Q. Do you understand what a bridge loan is?

16 A. Yes.

17 Q. And what's your understanding of what a bridge
18 loan would be?

19 A. It's a short period of time that allows a
20 borrower to arrange other financing.

21 Q. And so would that fit the definition of the
22 loan that was being made to Jefferson Enterprises and
23 Mr. Morrison?

24 A. Yes.

25 Q. The bank wasn't intending to finance the

1 complete development?

2 A. No, that was not. On this loan the bank
3 wasn't intending to finance the whole development. The
4 bank was -- with the representation that Dustin had made
5 to me is that we were going to move on and he was to
6 bring an investor of cash in and then we would look at
7 the development loan.

8 Q. So that was the basis of the loan from the
9 beginning, that there would be other, either another
10 bank to do the financing or an investor or someone else
11 coming in at some point in time?

12 A. No. The basis for this loan was to bail
13 Dustin's ass out of the fire on the sale of the
14 contract.

15 Q. I like it when you get to the point. Let's
16 get to the point here. You knew that the reason that he
17 needed to have his ass bailed out of the fire was
18 because he needed to find permanent financing or another
19 investor?

20 A. No, what he needed to do was to pay Mike Wood
21 off or he would lose the property. That's how it was
22 represented to me.

23 Q. So this bridge loan was to facilitate the
24 purchase.

25 A. That's correct.

1 Q. The bank was going to be in it for a year.

2 A. That's correct.

3 Q. The value of the property was very important
4 in making the loan.

5 A. Yes.

6 Q. So you knew that Morrison, Jefferson
7 Enterprises, would be looking for investors or others,
8 maybe even to sell the property, after the Mike Wood
9 obligation was paid?

10 A. I don't know about the sale. Dustin had
11 talked to me about various investors prior to me taking
12 this loan to committee that he was in discussions with
13 to raise the additional cash to do the development.

14 Q. And you were aware of his goals in that
15 regard.

16 A. Yes.

17 Q. And once the loan was made and there was this
18 substantial change in working capital and the other
19 ratios, how attractive would he be to a partner
20 investor?

21 A. I have no idea about that. Because when the
22 loan was presented, the loan was presented that the
23 subordination, that we could get the 80 Acres, Inc.,
24 subordinated to us, to the Bank of Commerce. It wasn't
25 until Dustin couldn't get the subordination that there

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1 was . . .

2 Q. So his financial strength would have an impact
3 on a potential investor?

4 A. I have no -- you are asking me to answer for
5 somebody that I don't know.

6 Q. You don't know the answer to that.

7 A. That's correct.

8 MR. LARSON: That's all.

9 (Witness excused at 11:45 a.m.)

10 (Signature requested.)

1 CHANGE SHEET FOR STEVEN WORTON

2 PAGE__ LINE__ REASON FOR CHANGE__

3 READS__

4 SHOULD READ__

5 PAGE__ LINE__ REASON FOR CHANGE__

6 READS__

7 SHOULD READ__

8 PAGE__ LINE__ REASON FOR CHANGE__

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20 PAGE__ LINE__ REASON FOR CHANGE__

21 READS__

22 SHOULD READ__

23

24 DEPONENT SIGNATURE:_____

25

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1 CERTIFICATE OF STEVEN WORTON

2
3 I, STEVEN WORTON, being first duly sworn, depose and
4 say: That I am the witness named in the foregoing
5 deposition; that I have read said deposition and know
6 the contents thereof; that the questions contained
7 therein were propounded to me; and that the answers
8 therein contained are true and correct, except for any
9 changes that I may have listed on the Change Sheet
10 attached hereto.

11 DATED this __ day of _____, ____.

12 CHANGES ON ERRATA SHEET YES__ NO__

13 _____

14 _____

15 STEVEN WORTON

16 SUBSCRIBED AND SWORN to before me this __ day

17 of _____, ____.

18 _____

19 _____

20 NAME OF NOTARY PUBLIC

21 NOTARY PUBLIC FOR _____

22 RESIDING AT _____

23 MY COMMISSION EXPIRES _____

24 _____

25 _____

1 REPORTER'S CERTIFICATE

2 I, PAUL D. BUCHANAN, CSR NO. 7, Certified
3 Shorthand Reporter for the State of Idaho, certify:

4 That the foregoing proceedings were taken before
5 me at the time and place therein set forth, at which
6 time the witness was put under oath by me;

7 That the testimony and all objections made were
8 recorded stenographically by me and were thereafter
9 transcribed by me, or under my direction;

10 That the foregoing is true and correct record of
11 all testimony given, to the best of my ability;

12 I further certify that I am not a relative or
13 employee of any attorney or party, nor am I financially
14 interested in the action.

15 IN WITNESS WHEREOF, I set my hand and seal this
16 11th day of November, 2011.

17

18

19

20

21

22

23

24

25

Paul D. Buchanan

PAUL D. BUCHANAN, CSR, RPR, RMR

Notary Public

P.O. Box 2636

Boise, Idaho 83701-2636

My Commission expires: June 20, 2016

Brian T. Tucker
ANDERSON NELSON HALL SMITH, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254
Attorney for The Bank of Commerce
Idaho State Bar Number 5236

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

THE BANK OF COMMERCE, an Idaho
banking corporation,

Plaintiff,

v.

JEFFERSON ENTERPRISES, LLC, an
Idaho limited liability company, DUSTIN
MORRISON and SONYA KIDD aka
SONYA MORRISON, THE CITY OF
POCATELLO, an Idaho municipality.,

Defendants.

Case No. CV-08-4231-OC

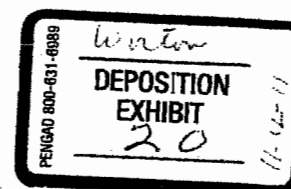
AFFIDAVIT OF STEVE WORTON

STATE OF IDAHO)
) ss.
County of Bannock)

Steve Worton, after being first duly sworn upon oath, deposes and states as follows:

1. I am over the age of 18 years.
2. This affidavit is made based on my own personal knowledge.
3. I was a loan officer and vice president employed by Plaintiff The Bank of Commerce (the "Bank").

AFFIDAVIT OF STEVE WORTON - 1



4. I was so employed by the Bank at all relevant times during 2006.

5. On April 21, 2006, I had a meeting with Dustin Morrison ("Dustin"), Pam Wake, Donna (last name unknown), and Andrew (last name unknown) at Pam Wake's office in the Key Bank building. Morrison presented Jefferson Enterprises, LLC's Southern Hills Development project (the "Project"). Morrison gave me a binder of information that had tax returns, financial entities statements, an appraisal of the subject property, projected sales and other information he believed was pertinent to the loan request. During this meeting, I asked Morrison about the Eighty Acres, Inc., mortgage which was on a portion of the subject property and whether the Bank of Commerce (the "Bank") would be able to obtain a first-position security interest in that portion of the property. Morrison told all of us at that meeting that he thought he could obtain a subordination from Eighty Acres, Inc., which would allow the Bank to be placed in first position on the entire property, including the Eighty Acres, Inc., portion of the property. After the meeting, Morrison took me out to the Southern Hills Development property and we drove over the property.

6. On May 3, 2006, I met with Eric Polatis and Deena Green, who were officers at First American Title, to review the title commitment for the Project. Eric Polatis and Deena Green had some questions about the ability to put the Bank in first position on all of the land that Morrison had offered to secure the proposed loan from the Bank. I contacted Morrison by telephone and asked him to come to the First American Title office to clear up the liens on the property. When Morrison arrived he was shown the title commitment and prior lien holders. Morrison again indicated that the first lien holder would subordinate its lien position to the Bank's lien position.

7. On May 8, 2006, the loan application package was submitted to the Bank's Loan Review Committee.

8. On May 9, 2006, the Bank's Board of Trustees (the "Board") approved a loan to Jefferson Enterprises, LLC, for \$2,200,000, rather than the requested \$2,800,000. I called and visited with Morrison about this change. Again, I reiterated that the Bank's mortgage would need to be in first position for all acreage. Later that evening, Morrison called me and said he was unable to get Eighty Acres, Inc., to subordinate their lien position. I therefore informed Morrison that the Eighty Acres, Inc.'s lien obligation would need to be paid off before the Bank would be able to proceed with the loan. Morrison suggested a couple of ideas for how he could meet the Bank's requirement to be in first position. For example, Morrison suggested that the loan amount could be increased to cover the additional money needed to pay off the Eighty Acres, Inc., lien obligation. Morrison also stated that he could put cash into a certificate of deposit and hold it in the Bank as additional security until the Bank's loan committee had time to review his additional request for more money to pay off the Eighty Acres, Inc., lien. Morrison said he would go to work on getting money together to make all of this work out, and I said I would have to talk to Tom Romrell ("Romrell"), the president of the Bank, to see if Morrison's suggestions would work. I told Morrison that I would call him the following morning after I had talked to Romrell.

9. On May 10, 2006, Karen Hammond ("Hammond") and I had an early morning telephone call with Romrell regarding Morrison's inability to place the Bank in first position on all of the secured property as the Board had required for the loan to be approved. I told Romrell about Morrison's idea to allow him time the following week to get the Board's

approval for an additional loan for funds to be used to pay off the Eighty Acre, Inc., debt. Romrell was not in favor of paying off the Eighty Acre, Inc., lien with an additional loan from the Bank. Instead, Romrell suggested that Morrison figure out a way to pay off the Eighty Acres, Inc., lien without an additional loan from the Bank. I then called Morrison and informed him that his idea of obtaining another loan from the Bank to pay off the Eighty Acre, Inc., lien would not work as the Bank needed its mortgage to be in first position before it would make the \$2,200,000 loan to Jefferson Enterprises, LLC and that \$2,200,000 was the limit that the Bank would loan on the project.

10. Later on May 10, 2006, I faxed a letter to the title company reiterating the Bank's position that its mortgage would need to be in first position.

11. Apparently, Morrison was able to pay off the Eighty Acres, Inc., debt, and thus release its lien. Thereafter, Morrison and his wife Sonya Morrison signed the note and mortgage securing the note on May 10, 2006 as members of Jefferson Enterprises, LLC. That mortgage placed the Bank in first position on all property subject thereto, including the property that had previously been encumbered by Eighty Acres, Inc. The Bank, therefore, loaned Jefferson Enterprises, LLC, \$2,200,000 (\$2,223,805 after including various charges) to purchase the subject real property on May 10, 2006. Morrison and his wife also signed personal guarantees, guaranteeing said loan.

12. From as early as at least April 21, 2006, the Bank's position was that its mortgage would need to be in first position for all property securing the loan to Jefferson Enterprises, LLC, including the Eighty Acre, Inc., property, before the Bank would loan money to Jefferson Enterprises, LLC.

13. Prior to the evening of May 9, 2007⁶, Morrison continued to represent that he believed he could get Eighty Acres, Inc., to subrogate its lien to the Bank's mortgage.

14. At no time did I ever tell Morrison that the Bank would loan him additional money to pay off the Eighty Acres, Inc., lien. Furthermore, I am not aware of any other Bank employee telling Morrison that the Bank would loan him additional money to pay off the Eighty Acres, Inc., lien.

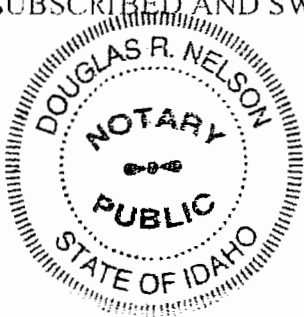
15. Neither Morrison nor his wife Sonya Morrison ever indicated to me that they were going to use all of their liquid assets to pay off the Eighty Acres, Inc., lien. Neither Morrison nor Sonya Morrison ever indicated to me that by paying off the Eighty Acres, Inc., lien, they and Jefferson Enterprises, LLC, would lose their ability to obtain other financing for this Project or for other projects.

DATED this 23rd day of June, 2009.

Steve Worton

Steve Worton

SUBSCRIBED AND SWORN to before me this 23rd day of June, 2009.



Douglas R. Nelson

Notary Public

Residing at: *Idaho Falls, Idaho*

Commission expires: *4.29.2011*

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this _____ day of _____, 2009, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Kirk Bybee
P.O. Box 4169
Pocatello, ID 83205

☐ Mailing
☐ Hand Delivery
☐ Fax
☐ Overnight Mail

Brent T. Robinson
ROBINSON & ASSOCIATES
P.O. Box 396
Rupert, ID 83350-0396

☐ Mailing
☐ Hand Delivery
☐ Fax
☐ Overnight Mail

BRIAN T. TUCKER

LABTT\0260.455\Affidavit - Worton.wpd

Southern Hills



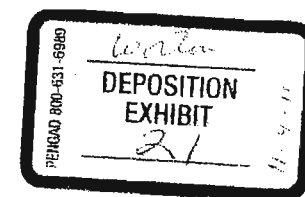
Mike Wood land at \$2,000,000.00 balance plus 2 years @ 5% interest plus \$40,000 fees	\$2,240,000.00
Direct development expenses to date	\$300,000.00
a. Bill and Brad for their expenses toward earnest money and engineering costs paid through July 31, 2005	\$140,000.00
b. Rocky Mountain Engineering and Survey to date	\$90,000.00
c. City annexation and master plan approval process	\$50,000.00
d. Market analysis and appraisal to date	\$20,000.00
80 Acres Inc. Paid	\$77,000.00
80 Acres Inc. debt with DL Evans	\$186,000.00
80 Acres Inc. Paid	\$35,000.00
Total Land Purchase to date	\$2,838,000.00

Total remaining balance on land after \$2,838,000.00 is \$598,767.00

a. March 1st 2007	\$35,000.00 is due
b. March 1st 2008	\$35,000.00 is due
c. March 1st 2009	\$35,000.00 is due
d. March 1st 2010	\$35,000.00 is due
e. March 1st 2011	\$494,000.00 is due
Total balance of	\$598,767.00 paid

Total Land Costs

Land Purchase	\$2,838,000.00
Remaining Land Balance	\$598,767.00
Sub-Total of Land Purchase	\$3,436,767.00
Total Balance Remaining	\$0.00



Southern Hills



Division 2a Year 1

REVENUE

43 Lots at \$34,000 1,462

INDIRECT DEVELOPMENT FINANCING

Interest @ 10% 126
Finance Fee 0.5% 6
Lot Release Fee \$5000/lot 215
Total Indirect Development Outlays 347

DEVELOPMENT

Other Development Costs 1,280
Interest 123
Fees 6
Total Development Outlays 1,409

SUBT LAND AND DEVELOPMENT OUTLAYS 1,756

+/- Prior Period Deficit/Surplus 0
Financing Requirement 1,756
Average Loan % of Fin Req 70%
Average Loan Balance 1,229

TOTAL PROJECT REVENUE 1,462
LESS LAND AND DEVELOPMENT OUTLAYS -1,756
NET SURPLUS (DEFICIT) -294
ACCUMULATED SURPLUS (DEFICIT) -294

INDIRECT EXPENSES

START 1,255

Indirect Loan Balance 1,040
Interest @ 10% 126
Finance Fee 0.5% 6

INDIRECT LOAN SERVICING

Contribution Per House Sale 0
Houses Sold 43
Total Principal Payments from House Sales 0
Plus Lot Release Fees from Above 215
Total Land Loan Principal Payments 215

TOTAL SUMMARY

Paid at end of 2a 215
Financing Fees and Interest 261
Development - Actual 1,050
City Contributions and Fees 13
Dry Utilities 80
Engineering and Surveying Fees 138

Southern Hills



"PROJECT UTILITY ENTITLEMENTS"

Indirect Development Expenses	
500,000 Gallon Reservoir	\$600,000.00
Culinary Water Booster	\$205,000.00
City Entitlement Cont.	\$100,000.00
City Water Right Investment	\$200,000.00
Water Tank Investment	\$150,000.00
<u>Sub-Total</u>	<u>\$1,255,000.00</u>

DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

THE BANK OF COMMERCE, an)
Idaho banking corporation,)
Plaintiff,)
vs.) Case No.
JEFFERSON ENTERPRISES, LLC,) CV 08-4231 OC
an Idaho limited liability)
company, DUSTIN MORRISON)
and SONYA KIDD aka SONYA)
MORRISON, THE CITY OF)

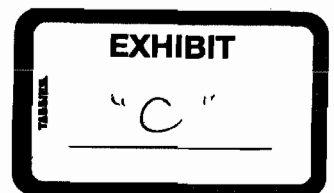
(Caption continued.)

ORAL DEPOSITION OF PAMELA K. WAKE

Taken on November 2, 2011

REPORTED BY:

PAUL D. BUCHANAN, RPR, RMR,
CSR No. 7, and Notary Public



1
2 Pocatello, an Idaho)
3 municipality,)
4 Defendants.)
5)
6 DUSTIN MORRISON and SONYA KIDD)
7 aka SONYA MORRISON, and)
8 JEFFERSON ENTERPRISES, LLC,)
9 an Idaho limited liability)
10 company,)
11 Counterclaimants,)
12 vs.)
13 THE BANK OF COMMERCE, an Idaho)
14 banking corporation,)
15 Counterdefendant.)
16)
17
18
19
20
21
22
23
24
25

1 APPEARANCES:
2
3 For the Plaintiff:
4 BRIAN T. TUCKER
5 Nelson Hall Parry Tucker
6 Attorneys at Law
7 P. O. Box 51630
8 Idaho Falls, Idaho
9
10 For the Defendants Jefferson Enterprises, LLC,;
11 A. BRUCE LARSON
12 ABLE Law, PC
13 Attorney at Law
14 155 South Second
15 Pocatello, Idaho
16
17 Also Present:
18 Dustin Morrison
19 Mike Morrison
20
21
22
23
24
25

I N D E X

3	Examination By:	Page
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10	Exhibits:	
11		
12	No. 1 - Wake Accounting of Events	36
13	No. 2 - Handwritten Notes 4/21/06	71
14	No. 3 - Fax Cover Sheet 10/6/05	83
15	No. 4 - Loan Prospectus	83
16	No. 5 - Fax Cover Sheet and Attachment 5/5/06	86
17	No. 6 - Fax to Morrison 4/28/06	86
18	No. 7 - Handwritten Notes	87
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25		

1 BE IT REMEMBERED that on November 2, 2011, at
2 the hour of 9:05 a.m. the deposition of PAMELA K. WAKE,
3 produced as a witness at the instance of the defendant
4 Jefferson Enterprises in the above-entitled action now
5 pending in the above-named court, was taken before Paul
6 D. Buchanan, CSR #7, and notary public, State of Idaho,
7 in the law offices of ABLE Law PC, 155 South Second
8 Avenue, Pocatello, Bannock County, Idaho.
9

10 WHEREUPON, the following proceedings were had:
11

12 PAMELA K. WAKE,
13 called at the instance of the defendant Jefferson
14 Enterprises, having been first duly sworn, was examined
15 and testified as follows:

EXAMINATION

17 BY MR. LARSON:

18 Q. Would you state your name, please?
19 A. Pamela K. Wake.
20 Q. What is your address?
21 A. 10598 West Lacey Road, Pocatello, Idaho 83202.
22 Q. Would it be all right to address you as Pam?
23 A. Yes, please do.
24 Q. That's the name that you usually go by?
25 A. Yes.

1 Q. Have you ever had your deposition taken?
 2 A. No.
 3 Q. So this is the first time that you have ever
 4 been in a deposition or seen a deposition taken?
 5 A. No, I have seen them taken but I have never
 6 had mine taken.
 7 Q. And you understand that I'll be asking you
 8 questions and you are to respond to those questions, and
 9 just as a matter of practice, I would appreciate it if
 10 you would let me finish the question before you start
 11 the answer and it's more for the court reporter's
 12 benefit than anyone else's, so we don't get my question
 13 over the top of your answer and him trying to sort those
 14 things out.
 15 When you answer a question, if it calls for
 16 like yes or no, say yes or no, don't go uh-huh, huh-huh,
 17 or shake your head. Although I probably know what you
 18 are meaning, it's hard to put that on paper and it's
 19 hard to decipher what those things mean.
 20 If you have any problem understanding a
 21 question that I may ask you, it's all right to say I
 22 don't understand, ask it again, rephrase that, something
 23 of that nature. And if you need to take a break for any
 24 reason, let us know and we can adjourn to take a few
 5 minutes. That's kind of some of the ground rules.

1 have any partners or employees?
 2 A. No.
 3 Q. During the time that you operated it, did you
 4 take on any partners or hire any employees?
 5 A. Yes.
 6 Q. Could you tell me, did you have any partners
 7 in the business?
 8 A. No.
 9 Q. And who were your employees during the time
 10 you operated the business?
 11 A. Donna Andrews and Tad Arbon.
 12 Q. Approximately how long or what period of time
 13 did Donna Andrews work for you?
 14 A. 2007 to 2009.
 15 Q. And how about the other individual you
 16 identified, Tad?
 17 A. I am sorry, it had to be before that. It had
 18 to be like 2005 through 2009.
 19 Q. Would that be the same for Tad Arbon?
 20 A. He was probably about 2007.
 21 Q. Could you describe the nature of your
 22 business?
 23 A. I did mortgage loans, mainly just home loans.
 24 I brokeraged loans. And then I did some commercial but
 25 not very much. I also had my security, health, and life

1 Could you tell me what your present employment
 2 is?
 3 A. I work for Red, Inc., a contractor, I work out
 4 at the site, the INL, and I am a construction
 5 coordinator.
 6 Q. How long have you had that employment?
 7 A. Two years.
 8 Q. Prior to that employment what was your
 9 employment?
 10 A. I was a mortgage broker.
 11 Q. Was there a name of the company that you
 12 worked for?
 13 A. Diversified Management Services.
 14 Q. Is that a company that you owned or had an
 15 interest in?
 16 A. I owned it.
 17 Q. How long did you operate that particular
 18 business?
 19 A. I had it for about six years.
 20 Q. What period of time would that have covered?
 21 A. When I was under Diversified Management it was
 22 right around 2005 through -- well, excuse me, about
 23 2004. I worked for brokerage companies and I just went
 24 on my own in about 2004.
 25 Q. And when you started that company, did you

1 insurance licenses.
 2 Q. So the main part of your business was a loan
 3 broker during that period of time?
 4 A. Yes.
 5 Q. And I'll get back to that but I want to ask
 6 you a few more questions about your employment prior to
 7 starting that business. And you mentioned that you had
 8 worked for some mortgage loan companies?
 9 A. Yes.
 10 Q. Could you tell me what mortgage loan companies
 11 that you had worked for and that period of time that you
 12 worked for those companies?
 13 A. In the year 2000 I started working for
 14 Mortgage Brokers out of Boise, and it was Kim Whiting.
 15 I can't remember the name right now, I am sorry. And I
 16 started working with them in the securities part, that's
 17 how I got into the mortgage brokers part, because I
 18 worked through World Mortgage -- or World Financial
 19 Group through my security license, and they had
 20 mortgages, and he asked me to start a mortgage company
 21 or be in charge of his mortgage company in Pocatello.
 22 Q. And he is the Whiting?
 23 A. Yes, Kim Whiting.
 24 Q. During that period of time where did you work
 25 physically?

1 A. I started in the Key Bank building on the
2 fourth floor.

3 Q. So from 2002 until 2005 you worked for --

4 A. Kim Whiting.

5 Q. And that was world mortgage?

6 A. World Financial Group was the securities part
7 of it, and I can't think of the mortgage part of it, I
8 am sorry.

9 Q. What were your duties during that period of
10 time?

11 A. I managed the loan officers and I trained the
12 loan officers, also did quite a few of the securities
13 meetings and things like that.

14 Q. How many loan officers were in that business
15 at that time under your direction?

16 A. Well, we had like seven because we also had
17 loan officers in Driggs, Idaho, and in Challis and
18 Salmon. He was trying to expand.

19 Q. Prior to that employment, could you give me
20 just a history of your employment prior to that time?

21 A. Okay, in 1980 I started to work out at the
22 site -- well, in 1980 I got divorced, I moved back to
23 Pocatello and I went to work for an attorney, Jay Meyers
24 and Herman McDevitt. And then I got a job like a couple
25 of years later and I started to work out at the site for

1 that a good way to designate it?

2 A. Yes.

3 Q. When you were operating Diversified, what is
4 it that you were doing at that time in regard to
5 mortgage loans?

6 A. I was doing home loans mainly.

7 Q. And could you just tell me the process of how
8 you would do that?

9 A. Well, a lot of my loans were by like word of
10 mouth from people I had serviced and got loans for
11 before, they would tell their friends, or I advertised a
12 little bit with letters that I would send out and things
13 like that, or I would notice that people were building
14 in areas and I would go and talk with the builders and
15 find out if they needed anybody to sell their homes or
16 anything like that.

17 Q. And once you found someone who wanted a loan
18 or applied through you for a loan, what happened from
19 that point?

20 A. I would have to get their credit checked and
21 then just start processing all the papers, contact the
22 title companies to get the title work done, get all of
23 their information that you would need for a loan.

24 Q. What were the source of the funds when you
25 made a loan?

1 the Department of Energy, and I worked out there through
2 2000.

3 And then in 2000 I went to work for Qwest, and
4 at this time -- telephone services -- and at this time I
5 had also gotten my securities license and was working
6 for Mr. Whiting, because I had two jobs then.

7 Q. Do you have any type of formal education?

8 A. I graduated from Idaho State University with a
9 degree in corporate training.

10 Q. What year would that have been?

11 A. 1996, the oldest woman in the youngest class.

12 Q. Where did you attend high school?

13 A. I went to high school through my junior year
14 here in Pocatello, I went to both Pocatello and
15 Highland, and then I graduated from Challis High School,
16 in the 1969. No -- yes, 1969.

17 Q. One follow-up question on that and I will get
18 more into the specifics of why we are here today. When
19 you worked for Jay Meyers and Herman McDevitt, what were
20 your duties there?

21 A. I was Herman's secretary.

22 Q. Legal secretary.

23 A. Yes.

24 Q. If I could bring you back to the business you
25 were operating was, if I call it just Diversified, is

1 A. I had different people that I would go to. I
2 worked a lot with people, like different loan companies,
3 banks; I would just contact the banks and make the
4 loans.

5 Q. How did you receive payment for your services?

6 A. I would get usually 1 percent up front and one
7 on the back, and it was just a contract that I would
8 have with other loan companies.

9 Q. So 1 percent on the front, 1 percent of what?

10 A. 1 percent of what the loan amount would be.

11 Q. So if the loan was a hundred thousand dollars,
12 you would get 1 percent of a hundred thousand dollars.

13 A. Yes, on the front, and then depending on what
14 you would make on the back is what you would charge that
15 person for interest. Like you could make 1, I know a
16 lot of people made 1 to 6 percent.

17 Q. And if you could explain that on the back
18 again, how you were paid a commission.

19 A. Like on the back if, say, if the interest rate
20 at that place where I would get the loan would be, say,
21 5 percent and I would charge my client 6 percent, then I
22 would make 1 percent; if you charged them more, then you
23 would make more.

24 Q. Would that be paid up front on -- excuse me,
25 how would that be paid, that percentage on the back?

1 A. You would get the 1 percent, the percentage --
 2 I would get paid at the closing of the loan, within the
 3 next three days after the loan closed.
 4 Q. So you would get your 1 percent from the front
 5 end at the closing. And then how would you be paid the
 6 other 1 percent on the back side?
 7 A. It's at the closing.
 8 Q. In a lump sum?
 9 A. In a lump sum, yes.
 10 Q. And was that the usual practice in that
 11 industry?
 12 A. Yes.
 13 Q. Did you have any association through
 14 Diversified with Bank of Commerce?
 15 A. Well, I did on one occasion. I had seen in
 16 the paper that the land out south of town was sold and
 17 they were going to have a big project on it. And so I
 18 contacted the owner of that property, which was Dustin
 19 Morrison, and asked him if he would be interested in me
 20 trying to get a loan.
 21 Q. Do you recall when you first met with Mr.
 22 Morrison or you first contacted Mr. Morrison?
 23 A. I would think that it probably would have been
 24 like April of 2006, I can't remember the exact date.
 25 Q. And what was the nature of your contact with

1 Mr. Morrison at that time?
 2 A. Well, he seemed like he was pretty excited to
 3 find somebody who could lend him the money and
 4 everything after the project, for his project, and I
 5 asked him if he would let me try, and he said yes. So I
 6 started sending out different fliers of what he would
 7 need to different people that I knew and that I had done
 8 business with. And I also contacted the Bank of
 9 Commerce in American Falls. And the reason I did that
 10 was because I was talking with my husband about that,
 11 and he said why don't you call them, they are really
 12 good. That's where he banked, because he worked in
 13 American Falls.
 14 Q. So was that the first contact you had had with
 15 Bank of Commerce?
 16 A. Yes.
 17 Q. In dealing with Mr. Morrison prior to that
 18 contact, what kind of information did you get from Mr.
 19 Morrison about his project?
 20 A. Well, he gave me a lot of stuff. There was
 21 like, he had big boards, like white boards that were
 22 kind of a heavy cardboard that he had drawn up about his
 23 whole project and the streets, the layout with
 24 everything, and they were really nice. He gave me
 25 appraisals, he gave me his taxes. And the appraisals

1 were really extensive, they had everything. There was
 2 just binders after binders that he gave me.
 3 Q. And I suppose you reviewed some of that
 4 information.
 5 A. Yes, I looked at a lot of it.
 6 Q. So after Mr. Morrison had supplied you with
 7 the information, you reviewed that, did you have an
 8 understanding of what he wanted to do?
 9 A. Yes.
 10 Q. What was that?
 11 A. He wanted to get a loan for about I am pretty
 12 sure like 2.8 million to buy the property, and he had
 13 already property up there, and he wanted to build a big
 14 housing development.
 15 Q. I am going to break that down. You said he
 16 had other property already there. Can you describe the
 17 other property he already had there?
 18 A. He had I am sure 80 Acres he had bought
 19 already up there.
 20 Q. That's how it is referred to is 80 Acres?
 21 A. Yes, I am pretty sure it's 80 Acres, Inc., or
 22 something like that.
 23 Q. So that's the property you are referring to
 24 that he already had?
 25 A. Yes.

1 Q. And the other property was what he was
 2 attempting to finance the purchase of.
 3 A. Yes.
 4 Q. Did you have an understanding of what the
 5 other property was?
 6 A. Well, he took me out there and showed me
 7 everything and it was just a big hillside out there and
 8 it started from -- it looked like it was starting, if I
 9 remember right, like there is an Idaho Grain Inspection
 10 out there and it was from there on to the gap, like
 11 towards the gap.
 12 Q. So with the financing of the parcel he wanted
 13 to purchase, did you have any knowledge of what needed
 14 to be done in order to accomplish that transaction with
 15 the purchase of the other property?
 16 A. Would you ask me that again.
 17 Q. Yes, that wasn't good. There is a parcel he
 18 already had.
 19 A. Right.
 20 Q. The 80 Acres, Inc., parcel. And he was
 21 obtaining financing from somewhere to acquire the other
 22 property. Do you know what the status of the other
 23 property was that he was trying to acquire?
 24 A. Well, he had an agreement with the property
 25 owner, is what I understand, and he had to have it

1 purchased within a certain point in time and if he did
2 not get that purchased, he was going to lose that
3 property or would not be able to buy that property,
4 because I think that the person had other people that
5 was interested in it.

6 Q. Do you recall the names of any of the persons
7 that were involved with the ownership of that property?

8 A. I am trying to think. Mr. Wood? But I am not
9 sure.

10 Q. Did you ever see the documentation in regard
11 to the purchase of the property, that property?

12 A. Well, I am sure it was probably in all of that
13 paperwork that Dustin gave me because I would have had
14 to have probably given that to the Bank of Commerce.

15 Q. So after you first met with Mr. Morrison and
16 discussed this proposal of his, what did you then do?

17 A. Well, I had contacted the Bank of Commerce and
18 I talked with a Mr. Steve Worton and he was very
19 interested in it. And he said he would like to meet
20 with Mr. Morrison, so I set up an appointment for them
21 to come to my office.

22 Q. Mr. Steve Worton, had you met with him before?

23 A. No.

24 Q. How did you contact Mr. Worton?

25 A. I contacted the Bank of Commerce and the

1 A. On Yellowstone in -- I can't even remember the
2 address, isn't that bad. But I had my office, it was on
3 Yellowstone.

4 Q. So you had moved your office from the Key Bank
5 building?

6 A. Yes, to Yellowstone.

7 Q. Did that meeting take place?

8 A. Yes, it did.

9 Q. And who attended the meeting?

10 A. Myself and Dustin Morrison, Donna Andrews, and
11 Mr. Worton.

12 Q. What happened at the meeting?

13 A. We just sat and talked. Dustin (indicating)
14 mainly gave an explanation of the property, because we
15 had the boards up that showed everything and we just sat
16 and listened to him, mainly.

17 Q. Were there any applications made at that time,
18 were there any documents signed?

19 A. No.

20 Q. How long did the meeting take?

21 A. Oh, I'd say we were there an hour, hour and a
22 half.

23 Q. So that was April 21?

24 A. 21st, of 2006.

25 Q. So after that meeting did you have any further

1 person who answered the phone, I told them what I wanted
2 to do, and they said, well, I will give you to Mr.
3 Worton. That's how I found him.

4 Q. And do you recall the first conversation you
5 had with Mr. Worton?

6 A. Yes.

7 Q. What was the substance of that, to the best of
8 your recollection?

9 A. I just told him about the property that I was
10 trying to get financing for and explained to him to the
11 best that I could of what was going to be going on there
12 and told him where it was, and he was very interested.

13 Q. So what next happened?

14 A. So I asked him if he would be interested in
15 meeting with Mr. Morrison, and he said yes. So I asked
16 him about a time, and I told him I would have to talk to
17 Mr. Morrison to see what was good for him, and we set up
18 a date.

19 Q. Do you recall what date was set up?

20 A. Yes, I have my notes right here. On the 21st
21 of April I met, had that setting at my office.

22 Q. What year was that?

23 A. 2006.

24 Q. And at your office, where would that have
25 been?

1 contact with Mr. Worton?

2 A. Several times I did. Like I have down here on
3 the 25th and he wanted me to make sure that I got all
4 the taxes for Dustin and everything from him to give to
5 Steve. And then on the 26th of April, Steve, I talked
6 to him on the phone and he needed the first two pages of
7 the appraisals of the homes that was going to be built
8 out there.

9 Q. When you obtained the taxes for Mr. Morrison,
10 what kind of taxes were requested by Mr. Worton?

11 A. Both his business and individual.

12 Q. So do you recall how many entities were
13 involved with the tax returns that you presented to Mr.
14 Worton or you obtained for Mr. Worton?

15 A. You mean the years?

16 Q. No, the names of the entities that were
17 involved.

18 A. American Dream Homes and his Sonya and Dustin
19 Morrison.

20 Q. Do you recall whether or not there were any
21 tax returns for an entity called Jefferson Enterprises?

22 A. Yes, there were, sorry.

23 Q. Did you meet with Mr. Worton?

24 A. Yes, I gave him all of the stuff. In fact we
25 met a couple of times, I don't have the dates. But we

1 met in my office a couple of times and I talked with him
2 a lot on the phone.

3 Q. At the time of the first meeting, did you have
4 any understanding in regard to the encumbrances on the
5 80 Acres, Inc., property?

6 A. Yes, there was some talk about Dustin had a
7 really good loan on that and it was zero interest. And
8 I think that he gave him \$35,000 plus what he bought the
9 property for, and there would be zero interest, and he
10 would have the first lien on the property because the
11 owner would not want the bank to be the first lien on
12 the property.

13 Q. So if I can break that down, the he you are
14 talking about is the lender or the person holding the
15 encumbrance on the 80 Acres?

16 A. Yes, and I don't know what his name was.

17 Q. But you understood that 80 Acres had a prior
18 encumbrance on it?

19 A. Yes.

20 Q. And you had explained that the terms were
21 favorable?

22 A. Yes, the terms were really favorable. I think
23 Dustin, I am not really sure, but I think he bought it
24 for like \$225,000 and it like appraised for a high
25 amount, like over a million dollars. And he had a lot

1 up for the 1 percent that we had discussed on the loan.

2 Q. Now, is this a 1 percent on the front --

3 A. Just 1 percent total.

4 Q. By the way, did you ever receive that
5 contract?

6 A. No.

7 Q. Was that discussed at the first meeting?

8 A. Yes, it was discussed on the telephone before
9 I ever met with Mr. Worton. I didn't like to work for
10 free.

11 Q. What was the next thing that happened after
12 you delivered some of these documents to Mr. Worton?

13 A. Well, I think I talked to Dustin several times
14 just about how things were going, talked with Mr. Worton
15 on how things were going. I never really met with him
16 after that, after we all started, you know -- I am
17 sorry, we met a couple of times after the first meeting,
18 but once things got rolling, I never really met with him
19 face to face.

20 Q. So your interaction with Mr. Worton would have
21 been over the phone?

22 A. Yes.

23 Q. Did you have other meetings with him,
24 face-to-face meetings?

25 A. No.

1 of equity from that property that he bought and they
2 were going to use that as the down payment.

3 Q. At the first meeting was there any discussion
4 that you recall that the bank would require that that
5 encumbrance be paid off?

6 A. No.

7 Q. Do you recall any conversation with Mr. Worton
8 at that first meeting about the bank's requirement for a
9 first position on the 80 Acres, Inc., parcel?

10 A. No, there was not. He thought that it was a
11 good -- it was a good deal that was already made and
12 that that could be used as a down payment for the equity
13 in the property.

14 Q. Is that something that Mr. Worton said at that
15 first meeting?

16 A. Yes, it was.

17 Q. So I guess as things progressed, you obtained
18 the tax returns and the other information that Mr.
19 Worton was requesting and you presented it to him or the
20 bank, how did that work?

21 A. I presented everything right through Mr.
22 Worton, I never talked to anyone else about it.

23 Q. Did you discuss with him how you would be
24 compensated for your services?

25 A. He told me that he would get a contract made

1 Q. Did you ever discuss with Mr. Worton the issue
2 of the bank's position in regard to the 80 Acres parcel?

3 A. Well, I think that I talked with him on the
4 phone because I don't know exactly what day it was, but
5 Dustin had talked to me and said that the bank -- he was
6 devastated because he said that the bank is saying that
7 he is having to pay that 80 Acres off before they will
8 give him the loan. So I had called Mr. Worton about
9 that.

10 Q. Do you recall when that conversation would
11 have taken place?

12 A. It was in May, just before the closing of the
13 loan.

14 Q. Prior to that conversation in May did you have
15 an understanding, based on your conversations with Mr.
16 Worton, on whether or not that prior encumbrance on the
17 80 Acres, Inc., property would have to be paid off or
18 subordinated?

19 A. No, he never said that.

20 Q. What was your understanding based on those
21 conversations of what the bank was going to require in
22 regard to the 80 Acres parcel?

23 A. Nothing.

24 Q. Your understanding is nothing or what were
25 they going to require?

1 A. They were not going to require anything;
 2 Dustin would just have that loan, he would pay it off as
 3 he had mentioned before, his agreement with the person
 4 that was selling him the property. He would be first
 5 and the bank could be second if that was a requirement.
 6 Q. In your conversations with Mr. Worton did he
 7 say anything to you about the 80 Acres parcel and the
 8 bank's position prior to this conversation just before
 9 the closing?
 10 A. No.
 11 Q. In the legal process we sent out things called
 12 interrogatories, questions to the other party, and I
 13 don't know if during the period of time you were a legal
 14 secretary if you remember doing those sorts of things.
 15 But, anyway, we sent some interrogatories to the Bank of
 16 Commerce and the Bank of Commerce provided us with some
 17 answers to those interrogatories. I am not going to go
 18 into great detail with you on those, but I would just
 19 like to cover a few things that they said in their
 20 responses to our interrogatories.
 21 MR. LARSON: Specifically, counsel, referring
 22 to Interrogatory No. 5 in the Bank of Commerce's
 23 Response to Jefferson Enterprises Interrogatories and
 24 Requests For Production of Documents.
 25 Q. Do you recall whether or not on May 8, 2006, a

1 Q. Who were you referring to?
 2 A. I was referring to Mr. Worton and Mr.
 3 Morrison.
 4 Q. Do you recall when you learned that?
 5 A. About the 2.2 million?
 6 Q. Correct.
 7 A. I think it was like a couple of days after we
 8 met at first, the first meeting. I think I talked with
 9 Mr. Worton on the phone and he said that they would
 10 approve 2.2, he was going after 2.2 million for
 11 approval.
 12 Q. During that conversation was there any
 13 discussion of the security for the \$2.2 million?
 14 A. No.
 15 Q. Was there any discussion of the 80 Acres,
 16 Inc., parcel during that conversation?
 17 A. No.
 18 Q. Was there any request, to your recollection,
 19 made by Mr. Worton that the encumbrance on the 80 Acres
 20 parcel be subordinated?
 21 A. No.
 22 Q. What title company was involved in the
 23 closing?
 24 A. I am thinking it might have been First
 25 American.

1 loan application package was submitted to the bank loan
 2 review committee?
 3 A. No.
 4 Q. Were you involved at all with the submission
 5 of the applications?
 6 A. No.
 7 Q. Did you review any of the applications?
 8 A. No.
 9 Q. Were you aware whether or not there were any
 10 changes in the amount requested by Jefferson Enterprises
 11 for the loan and the amount that was actually loaned by
 12 the bank on this project?
 13 A. No.
 14 Q. In the initial meeting you had with Mr. Worton
 15 and Mr. Morrison, do you remember what was requested as
 16 far as the amount of the loan?
 17 A. I believe Mr. Morrison requested 2.8 million
 18 and the bank approved 2.2 million.
 19 Q. How did you come to that knowledge?
 20 A. With conversations with Dustin and Mr.
 21 Morrison.
 22 Q. When did you learn of that change --
 23 MR. TUCKER: You said Mr. Morrison. Dustin --
 24 THE WITNESS: I am sorry, Dustin and Mr.
 25 Worton.

1 Q. Did you have any interaction with First
 2 American in regard to the title reports or the
 3 commitments?
 4 A. No.
 5 Q. Did you see any of those documents?
 6 A. No.
 7 Q. So shortly before the loan closing you say you
 8 obtained a telephone call from Mr. Morrison?
 9 A. Yes.
 10 Q. Dustin Morrison.
 11 A. Yes.
 12 Q. What was the information that you obtained in
 13 that telephone conversation?
 14 A. He was pretty upset, saying that they were
 15 going to make him pay off the loan on the 80 Acres or
 16 they had to have first lien, and of course he was saying
 17 that the owner of the property that he bought the 80
 18 Acres from would not take the first lien -- or let the
 19 bank take the first lien, and that he just didn't know
 20 how he was going to come up with the money to pay off
 21 the property, and tried to get onto his other banks,
 22 trying to get loans and stuff, but it was pretty steep
 23 with borrowing.
 24 Q. Let me kind of shift gears here a little bit.
 25 I am trying to get some context again. Do you recall

1 whether or not you attended any public meetings that
2 involved the Southern Hills project in 2005?

3 A. Oh, boy, I think I did go to a meeting, yes.

4 Q. Did Mr. Morrison on behalf of Jefferson
5 Enterprises submit a proposal for the loan request at
6 that first meeting?

7 A. A loan for -- I guess I don't understand the
8 question.

9 Q. Let's kind of separate things here. I am not
10 talking about the public meeting. I am talking about
11 your first meeting --

12 A. Okay, sorry.

13 Q. In the documentation that Mr. Morrison
14 brought, did he have any proposal for the loan request
15 at that meeting?

16 A. Yes, he did.

17 Q. Do you recall whether or not that request was
18 in writing?

19 A. I am sure that it was.

20 Q. And you are saying I am sure, so is it a
21 problem with your recollection or what?

22 A. I don't remember.

23 Q. Do you recall whether or not at that first
24 meeting the second position on the 80 Acres parcel was
25 offered as part of the request for the loan?

1 Q. At some point in time you learned from Mr.
2 Worton that the loan had been approved.

3 A. Yes.

4 Q. And that was sometime prior to May 9?

5 A. Yes.

6 Q. Do you recall when that would have been?

7 A. No.

8 Q. Would it have been in April?

9 A. Yes.

10 MR. TUCKER: Objection, she already said --

11 A. I don't know.

12 Q. Think about this timeframe, it's a short
13 timeframe, between the 9th of May and the 26th of April.
14 When did you, if you recall, first learn that the loan
15 had been approved by the Bank of Commerce?

16 MR. TUCKER: Object, asked and answered.

17 Q. Go ahead and answer the question, if you can.

18 A. I do not know what day it was.

19 Q. Do you recall having a conversation with Mr.
20 Worton advising you that the loan had been approved?

21 A. Yes.

22 Q. Do you have any sense of the timeframe of when
23 that would have been?

24 A. It all happened really fast. I would say in
25 May. I don't know.

1 A. I don't think that it ever was.

2 Q. The loan on the 80 Acres to your knowledge was
3 discussed at that first meeting?

4 A. Yes, it was.

5 Q. And was there a reason that it was discussed
6 at the first meeting?

7 A. Yes, because Dustin was saying how good of a
8 deal that it was, that he didn't want to get a loan for
9 it because the loan that he had right now, he wasn't
10 paying any interest on it. So he didn't want to get a
11 loan to pay off that property, because it was his
12 working, I think his statement was it was his working
13 capital that he had that he could work to start his
14 homes.

15 Q. And that was discussed in that meeting with
16 Mr. Worton?

17 A. Yes, it was.

18 Q. So what was the discussion that you recall
19 about the working capital that was needed for the
20 project?

21 A. Well, that was what the loan -- some of it
22 would be for the buying of the property, but he would
23 still have some money left over to work and start the
24 homes. And that's why they wanted the appraisals on the
25 homes.

1 Q. In that conversation were there any specifics
2 of the approval discussed?

3 A. No.

4 Q. Were you made aware of any other conditions or
5 contingencies on the approval of the loan?

6 A. No.

7 Q. Were you requested to provide any further
8 financial information on Mr. Morrison or the companies
9 that he owned?

10 A. No.

11 Q. Was there any discussion during that telephone
12 conversation with Mr. Worton about the subordination of
13 the loan on the 80 Acres parcel?

14 A. Will you ask me that again?

15 Q. During that conversation, and this
16 conversation is the one about the approval of the loan,
17 was there any part of that conversation directed at the
18 bank's request that the encumbrance on the 80 Acres
19 parcel be subordinated?

20 A. No.

21 Q. Was there any discussion in that conversation
22 that the encumbrance on the 80 Acres parcel would have
23 to be paid?

24 A. No.

25 Q. After that telephone conversation with Mr.

1 Worton on the approval, do you recall of any other
2 telephone conversations you may have had with him?
3 A. Yes.
4 Q. And what conversation did you have?
5 A. I called him to see why they were going to
6 make Dustin and Sonya pay off that loan when it was
7 never discussed.
8 Q. What prompted that telephone call to Mr.
9 Worton?
10 A. Dustin came over or called me, I don't recall
11 which, but I think that he called me and said that they
12 were going to make him pay off that loan or he would not
13 get his loan, and he was really upset, he didn't know
14 how he was going to get that money and he only had a
15 couple of days to do it.
16 Q. So then you called Mr. Worton?
17 A. Yes.
18 Q. What was the substance of that telephone
19 conversation?
20 A. I told him I had just talked to Dustin and I
21 asked him what was happening and he said, well, things
22 just weren't going well right now and that the bank, he
23 has got to come up with some money, but he was headed to
24 Idaho Falls and he would talk to me later.
25 Q. In that conversation did you discuss the issue

1 of the 80 Acres parcel encumbrance?
2 A. Well, yeah, because I had asked him about
3 that, that's why I had called him.
4 Q. And what did he tell you about that in
5 particular?
6 A. He said he was going to Idaho Falls to talk
7 about that, to the bank.
8 Q. Did you hear again from Mr. Worton?
9 A. I did talk to him at one other time and when
10 he told me that the loan was closing, I had called him
11 and asked him when I could expect my payment and he told
12 me that I would not be receiving a payment because they
13 didn't do that.
14 Q. Do you recall about when that conversation
15 would have taken place?
16 A. It was after they closed.
17 Q. So, if I understood you right, you said you
18 talked to him about they were going to close and you
19 asked him about your payment.
20 A. Yes, and that was before they closed, not
21 after they closed, I am sorry.
22 Q. Any other conversations with Mr. Worton that
23 you recall?
24 A. Not on this matter, no.
25 Q. And you have never talked to him in any manner

1 about this transaction since that date?
2 A. No.
3 Q. Did you ever receive payment?
4 A. No.
5 MR. LARSON: I would like to take just a few
6 minutes break and talk with my client for a couple of
7 minutes.
8 (Short recess.)
9 MR. LARSON: Back on the record.
10 (Deposition Exhibit No. 1 marked for
11 identification.)
12 Q. Pam, I am going to hand you what's been marked
13 as Deposition Exhibit No. 1. It's a document. Do you
14 recognize it at all?
15 A. Yes, I do.
16 Q. What kind of document is it?
17 A. It was my accounting of the events that
18 happened. I typed it up.
19 Q. Do you recall when you typed that up?
20 A. Does it have a date on it? I don't, I don't
21 remember what date it was.
22 Q. Was it shortly after the transaction?
23 A. No. I couldn't tell you, I really don't know,
24 I am sorry.
25 Q. What was the reason that you put together this

1 recollection or accounting of the transaction?
2 A. Dustin had called me and asked me if I would
3 be willing to type up an accounting of events that
4 happened, because the bank was going after him for
5 money.
6 Q. So you prepared this document yourself?
7 A. I did.
8 Q. Based on your recollection?
9 A. Yes.
10 Q. If you would look at an attachment to that
11 accounting. Do you remember that document?
12 A. Yes, I do.
13 Q. And was it part of the information or is this
14 a copy of part of the information that was supplied to
15 you by Mr. Morrison for that first meeting, first
16 meeting with the bank in April of 2006?
17 A. Yes, it was.
18 Q. And you said there was a large amount of
19 information provided at that time?
20 A. Yes, there was.
21 Q. Was this part of the request for the
22 financing?
23 A. Yes.
24 Q. And you have attached that to your accounting.
25 A. Yes.

1 Q. Could you explain why you attached it to the
2 accounting?

3 A. Because this was the 80 Acres and it showed --
4 no, this isn't the 80 Acres. This was a part of the
5 appraisal part --

6 Q. Let's just look at it to see if I can refresh
7 your memory. It's talking about an amount of money to
8 be borrowed; isn't that correct?

9 A. Yes.

10 Q. And so what amount was that proposed at the
11 time?

12 A. \$2 million plus two years at 5 percent
13 interest plus \$40,000 in fees.

14 Q. So that was the amount being requested by Mr.
15 Morrison at the time this was presented to the Bank of
16 Commerce?

17 A. Well, I am pretty sure that we asked for 2.8
18 million up front.

19 Q. Let's go on through the accounting here. Just
20 take your time and read through this. Does it show some
21 other expenses and costs involved in the project?

22 A. Yes.

23 Q. That had been paid out or --

24 A. Okay, I see what you are saying, yes.

25 Q. Is there a gross figure of what was being

1 requested in that loan, for the loan?

2 A. Yes, the total gross.

3 Q. What would that have been?

4 A. Well, the total purchase to date was
5 \$2,838,000.

6 Q. And is there a reference in those numbers to
7 the 80 Acres parcel?

8 A. No. Okay, 80 Acres --

9 Q. That was a bad wording. Does it refer to
10 anything in regard to 80 Acres?

11 A. Yes, it does.

12 Q. And what's the reference?

13 A. Well, that 80 Acres, Inc., paid \$77,000 and
14 that they owed D.L. Evans \$186,000, and 80 Acres, Inc.,
15 paid \$35,000, and the total land purchase to date would
16 be \$2,838,000.

17 Q. So below that there are some references that
18 you have highlighted in yellow. I suppose you did that;
19 correct?

20 A. Yes, probably, because I attached it.

21 Q. So in that reference does it again refer to
22 the payment schedule for the 80 Acres parcel?

23 A. Yes.

24 Q. And does it show how that's being paid?

25 A. Yes.

1 Q. And can you explain that?

2 A. Well, it's showing that the total balance of
3 land after \$2,838,000 is \$598,767. In the years --

4 Q. Let's just stop right there. Is that the
5 equity figure you were talking about in regard to the 80
6 Acres parcel? Do you recall?

7 A. I don't recall. What I recall is that there
8 was like the land was appraised at \$1,600,000 some
9 dollars, is what I recall.

10 Q. So with the rest of that schedule, what does
11 it represent to you?

12 A. It represents from the years 2007 to 2010 they
13 would pay \$35,000 a year towards that. And then on
14 March 1 of 2011 they would pay the remaining due of
15 \$494,000.

16 Q. So that was the 80 Acres encumbrance.

17 A. Yes.

18 Q. And that's how it was presented to Mr. Worton
19 at the first meeting?

20 A. Yes.

21 Q. Do you recall whether or not that was ever
22 changed in any of the discussions you had with Mr.
23 Worton?

24 A. No.

25 Q. Going back to your accounting --

1 MR. LARSON: Give me just a minute, I will
2 make a copy.

3 MR. TUCKER: I would like a copy of the entire
4 thing.

5 (Pause in proceedings.)

6 Q. I would like to go through this accounting a
7 little bit with you, Pam, if I could. And you wrote
8 this sometime after the transaction closed but you just
9 can't remember the timeframe.

10 A. Yes, that's correct.

11 Q. But it's been a period of time ago that you
12 wrote this document.

13 A. Yes.

14 Q. I am trying to pin it down a little bit. Is
15 it more than a month prior to today?

16 A. Oh, yes.

17 Q. More than a year?

18 A. I would say more than a year.

19 Q. More than two years?

20 A. I don't think so.

21 Q. So between one and two years?

22 A. Yes.

23 Q. In the accounting you say that, it says you
24 contacted Dustin Morrison after seeing that he had
25 received final approval from the City of Pocatello for

1 his Southern Hills development.
 2 A. Yes.
 3 Q. Is that an accurate statement?
 4 A. Yes, it is.
 5 Q. Again, there is no timeframe on that, but do
 6 you recall if that's within the time frames that you
 7 discussed in your earlier testimony?
 8 A. Yes.
 9 Q. And it says, "My interest was to be involved
 10 with the finance brokering of this project, to help both
 11 parties and to make a commission."
 12 A. That's correct.
 13 Q. Then it goes on to say that Mr. Morrison had
 14 been working with Kim Webber at D.L. Evans Bank and was
 15 not receiving the support he wanted. Could you tell me
 16 how you learned that information?
 17 A. From Mr. Morrison. I also even went to D.L.
 18 Evans Bank to talk to them about it.
 19 Q. So when was it that you talked with D.L. Evans
 20 Bank?
 21 A. Within the same timeframe of contacting
 22 everyone else.
 23 Q. And it says they wanted to borrow less than
 24 the \$2.8 million. They offered to finance 2.2 million
 25 for the purchase of the land if Mr. Morrison would

1 Q. I will read it to you. "The 80 Acres, Inc.,
 2 piece was already under contract and had no financing
 3 needs." How did you learn that?
 4 A. Well, from talking with Mr. Morrison and then
 5 with our meeting the first time that we met with Mr.
 6 Worton we discussed that.
 7 Q. What was your understanding of why Mr. --
 8 based on this accounting, does it refresh your memory at
 9 all about the transaction?
 10 A. Yes.
 11 Q. What was your understanding in regard to the
 12 amount of money that Mr. Morrison through Jefferson was
 13 attempting to borrow?
 14 A. The amount of money was like he wanted \$2.8
 15 million.
 16 Q. Why was he wanting \$2.8 million?
 17 A. Well, to buy the property and then to use some
 18 of it as working capital.
 19 Q. Part of the transaction and part of the
 20 information you received was a market analysis.
 21 A. Yes.
 22 Q. Did you review that at all?
 23 A. Yes.
 24 Q. Was it voluminous?
 25 A. Yes, it was.

1 provide a cash deposit equal to one year's interest in
 2 an interest bearing interest reserve account. Did you
 3 have -- I guess you had a discussion with Mr. Webber at
 4 the bank and learned that?
 5 A. Yes.
 6 Q. We can go on through this. It says that Mr.
 7 Morrison had a preapproved subdivision. How did you
 8 know that?
 9 A. From the final approval from the City of
 10 Pocatello.
 11 Q. And it says then following that that The
 12 appraisal of the 80 Acres, Inc., piece of the Southern
 13 Hills Subdivision was for \$1.68 million. And you had
 14 that information from the loan request package?
 15 A. From the appraisal, I had Dustin's appraisal
 16 on the property.
 17 Q. And it goes on to say, The appraisal of the
 18 Mike Wood piece of the Southern Hills Subdivision was
 19 for \$5.32 million.
 20 A. Yes.
 21 Q. So without reading the rest of that paragraph
 22 you again discuss the 80 Acres, Inc., parcel that was
 23 already under contract. Did you learn that from the
 24 loan application -- or from the loan request, excuse me?
 25 A. Would you ask me that again, please?

1 Q. You have got a provision in here or a heading
 2 that says The Deal. It says, "Mr. Worton was very
 3 interested in being a part of this." Right?
 4 A. Yes.
 5 Q. You discussed the commission fees again with
 6 him?
 7 A. Yes.
 8 Q. You set up the meeting we have already
 9 discussed. It says, "Mr. Morrison specifically
 10 requested \$2.8 million in exchange for a first position
 11 on the Mike Wood pieces of land and a second position on
 12 the 80 Acres, Inc., piece."
 13 A. Yes.
 14 Q. Now, in your prior testimony I believe you
 15 said that that was not discussed. Does that refresh
 16 your memory as to whether or not the 80 Acres parcel was
 17 discussed at the meeting?
 18 A. Yes.
 19 Q. And you prepared this document by yourself --
 20 A. I did.
 21 Q. You weren't prompted by anybody, you weren't
 22 told what to put in it?
 23 A. No.
 24 Q. We have your prior testimony about nothing
 25 discussed on the 80 Acres and you have your accounting

1 talking about that specific thing. Which is correct,
2 was that discussed?

3 A. We discussed the 80 Acres a lot, and I am
4 sorry, I probably misunderstood your question, but we
5 discussed this 80 Acres several times. And we really
6 discussed it the first time that we went into this
7 meeting with Mr. Worton.

8 Q. So is it correct that the request would have
9 allowed the 80 Acres parcel to continue with the present
10 encumbrance and the bank having a second position?

11 A. Yes.

12 Q. So with that in mind, Mr. Worton came back
13 saying that the board would offer a loan in the amount
14 of \$2.2 million. That's the conversation that you
15 testified about earlier. Was there anything in that
16 conversation that changed what you understood the offer
17 to be in regard to the 80 Acres?

18 A. No.

19 Q. You go on in your accounting of some
20 conversations with Mr. Morrison in regard to the
21 transaction and how that happened. Is that a correct
22 version of your recollection of those conversations?
23 And I am looking at the second page.

24 A. Yes, it is.

25 Q. And you have had a chance to read through that

1 Worton's offer."

2 A long sentence. But a couple of things.

3 Does that refresh your memory as to when you wrote this
4 document?

5 A. Yes, it does.

6 Q. Would it have been somewhere around May 21 of
7 2007?

8 A. Yes.

9 Q. And does that refresh your memory as to the
10 request for the first position on the 80 Acres, Inc.,
11 parcel?

12 A. Yes.

13 Q. So, again, going to your attachment -- I guess
14 you attached this at the same time you drafted this
15 document?

16 A. I'm sure I did.

17 Q. It's from documents that you had in your
18 files?

19 A. Yes.

20 Q. So, if I understand this request that was
21 made, the full request was for \$2.8 million.

22 A. Correct.

23 Q. And \$2,240,000 was for the purchase of the
24 Mike Wood property.

25 A. Yes.

1 again?

2 A. Yes, I did.

3 Q. And remembering your testimony of today, is
4 this correct, to the best of your knowledge and belief,
5 the conversations or some of the conversations that
6 would have taken place with Mr. Morrison?

7 A. Yes.

8 Q. You go into -- it's the second paragraph from
9 the bottom and the first paragraph above, it says
10 Conclusion, it says that you had a conversation with Mr.
11 Morrison. He asked me if -- and this conversation was
12 on May 21, 2007. So about a year later. "Mr. Morrison
13 asked me if there was any possibility that his request
14 to Steve was not clear. He asked me if there was ever
15 any mention by Steve of requiring a first position on
16 the 80 Acres, Inc., land." And it says in there I
17 replied, Absolutely not and it was clear that you did
18 not desire to replace the financing on the 80 Acres
19 land.

20 "He then asked me to write down my
21 recollection of the events leading up to the commitment
22 from Mr. Worton in relation to my understanding of Mr.
23 Morrison's request and what was being offered by Mr.
24 Morrison for it, as well as my understanding of Mr.
25 Worton's understanding of Mr. Morrison's request and Mr.

1 Q. And the other itemization of \$300,000 is for
2 the direct development expenses of the property as of
3 that date.

4 A. Yes.

5 Q. So there is a list of things that were done,
6 Bill and Brad for their expense toward earnest money,
7 engineering costs, the city annexation and master plan
8 approval process, and the market analysis and appraisal.
9 So those things are itemized as expenses that were
10 already into the project?

11 A. Correct.

12 Q. There was an amount that had already been paid
13 to 80 Acres of \$77,000?

14 A. Yes.

15 MR. TUCKER: This has all been asked and
16 answered.

17 MR. LARSON: I understand. Bear with me.

18 Q. 80 Acres, Inc., still had a debt with D.L.
19 Evans Bank of \$186,000?

20 A. Yes.

21 MR. TUCKER: I think that mischaracterizes her
22 testimony. I don't think that's what she said. I think
23 the document speaks for itself.

24 A. Didn't I just go over it line for line?

25 MR. LARSON: You think she said something

1 different from that before?

2 MR. TUCKER: I think she did.

3 Q. In your prior testimony when you discussed
4 these expenses, what was your understanding?

5 A. Well, my recollection was the \$2.8 million
6 would go for the property and working capital, but as I
7 see here, he was using the \$2.8 million to pay off his
8 other debt that he already had.

9 Q. So is that your understanding of how the
10 request was presented to Mr. Worton?

11 A. Yes.

12 Q. So this would be accurate as to what your
13 understanding was at the time of the request?

14 A. Yes.

15 Q. By "this," this accounting that you have here
16 before you today.

17 A. Yes.

18 Q. So the \$2.8 million would have been, if it
19 were loaned, the \$2.8 million would have included
20 reimbursement for expenses that had already been paid in
21 the development?

22 A. Yes, it would have been reimbursed to -- my
23 thoughts are it would be reimbursed to Mr. Morrison
24 because he had already paid them. And that way it would
25 have been his working capital.

1 Q. So with the information that you have been
2 provided and that you subsequently provided to the bank,
3 and we looked at those appraisal amounts in your
4 accounting, the total appraised value of the real
5 property was like \$7.5 million, and that included the 80
6 Acres parcel?

7 A. Yes.

8 Q. And also the Mike Wood parcel.

9 A. Yes.

10 Q. The \$2,240,000 was to pay off or purchase the
11 Mike Wood parcel.

12 A. Yes, and to pay those expenses that Dustin had
13 already forked out.

14 Q. And in your business as a loan broker, I guess
15 you understand the loan to value analysis?

16 A. Yes.

17 Q. So the loan that was being requested, the
18 total loan was \$2.8 million; correct?

19 A. Correct.

20 Q. And the appraised value of the property that
21 you were presenting on behalf of Mr. Morrison or through
22 your brokerage activity was seven and a half million
23 dollars.

24 A. Yes.

25 Q. So the division, I guess, would be \$2.8

1 million compared to 7.5 million, what percentage that
2 would be. Is that something that you would look at as
3 far as a loan brokerage, as far as determining whether
4 or not a request for a loan would be viable?

5 A. Yes.

6 Q. I suppose you looked at the other information
7 that you had from Mr. Morrison on his other entities,
8 the tax returns and so on?

9 A. Yes, I did look at them.

10 Q. And did that provide a basis in your proposal
11 and on behalf of Mr. Morrison or however that
12 arrangement worked to show that he would have adequate
13 working capital to continue with the project?

14 A. Yes.

15 Q. So in that context, going back to what we were
16 talking about before, you said that you got a call
17 shortly before closing from Mr. Morrison and he was
18 devastated. Could you explain what he said on that day
19 and what made you believe he was devastated?

20 A. I could tell in his voice that he was and the
21 reason I felt he was devastated was because they were
22 going to make him pay off that loan which he didn't have
23 the money to pay that loan off because he had paid all
24 these bills off. And when he would get that loan, then
25 he would be able to put the money back into his accounts

1 or however they do that and have his working capital
2 back.

3 But he had paid all of this money off
4 (indicating) already and part of -- he didn't have the
5 money to pay off the 80 Acres. And they came to him the
6 day before the closing to do that, or two days before.

7 Q. As part of your conclusion in this Deposition
8 Exhibit No. 1, and that's on the third page, you have a
9 quote from Mr. Worton -- let's just go back to the
10 second page. You state "The financing terms that
11 specified that 80 Acres, Inc., would retain first
12 position were clearly spelled out in the contract which
13 I personally provided to Mr. Worton."

14 So what are you talking about there with the
15 contract that you personally provided to Mr. Worton?

16 A. I imagine it was the note that's attached.

17 Q. Is that the note that you attached to the --

18 A. Yes.

19 Q. And that's the 80 Acres note?

20 A. Yes.

21 Q. And that's something that was part of the loan
22 request presented to Mr. Worton?

23 A. Yes.

24 Q. You go on to state, "These terms were an asset
25 to this project and were represented on the cover of the

1 debt service schedule which I personally provided to Mr.
2 Worton." Is that also a correct statement?

3 A. Yes.

4 Q. It goes on to say, and is this a quote from
5 Mr. Worton, it says, "Mr. Worton said he had to fight
6 for this loan with the board."

7 A. Yes, he did.

8 Q. So based upon this accounting and your best
9 recollection, those items were in fact discussed with
10 Mr. Worton in regard to the 80 Acres parcel?

11 A. Yes.

12 Q. And that he was fully aware in the request
13 that the bank would be in second position on the 80
14 Acres parcel?

15 A. Yes.

16 MR. LARSON: Give me just a minute.

17 (Discussion off the record.)

18 MR. LARSON: Back on the record. I am
19 finished.

20 EXAMINATION

21 BY MR. TUCKER:

22 Q. Is it all right if I refer to you as Pam?

23 A. Please.

24 Q. My name is Brian Tucker and I represent the
25 Bank of Commerce in this matter. You and I have never

1 Q. Your testimony today was that prior to the
2 loan closing you had conversations with Mr. Morrison and
3 I believe Mr. Worton about this change, as you call it,
4 regarding the 80 Acres; is that correct? That the bank
5 was going to require that to be either paid off or first
6 position?

7 A. Yes.

8 Q. And that was before the loan closed; is that
9 right?

10 A. Yes, like the day before.

11 Q. So if you look at your statement, Deposition
12 Exhibit No. 1, on the second page, the second line down,
13 it says, looking right here (indicating), Mr. Morrison
14 then informed me some time after the date of closing
15 that there was some type of misunderstanding the day
16 before the last day to close. He informed me that for
17 some reason Mr. Worton had failed to inform the Bank of
18 Commerce board of directors that the 80 Acres piece did
19 not require financing and was being offered only as a
20 second position.

21 Is that the first time you found out about it
22 or did you find out about it before or after closing?

23 A. Now ask me the question again.

24 Q. I believe your testimony today was that you
25 found out about this supposed change regarding the 80

1 spoke, have we?

2 A. No.

3 Q. Let me go through a couple of things. One of
4 the things that Mr. Larson asked you about was the
5 viability of the project. Do you have experience with
6 commercial projects?

7 A. Not a whole lot.

8 Q. In fact your experience is more in the
9 residential real estate area, isn't it?

10 A. Yes, it is.

11 Q. How many commercial projects have you actually
12 been a part of?

13 A. I would say I probably did six or seven.

14 Q. But you wouldn't say that was your expertise.

15 A. No.

16 Q. This summary that you have provided that was
17 Deposition Exhibit No. 1, how many different versions of
18 that have you put together?

19 A. That is the only one I put together.

20 Q. So you have never come up with different
21 versions of that?

22 A. No.

23 Q. You never added to that or changed it in any
24 way?

25 A. No.

1 Acres before closing. However, your statement seems to
2 say you found out about it after closing.

3 A. Well, I knew about it before the closing but
4 then after the closing I had talked with Mr. Morrison
5 and it was probably when he asked me to write this up
6 (indicating), because he said, then he informed me
7 sometime after the date of closing there was some type
8 of misunderstanding the day before the closing.

9 Q. I think you said he asked you to type it up
10 sometime after the May 21, 2007, date that's later on in
11 this paragraph.

12 A. Right. You know, I don't know. I know I did
13 talk with both Dustin and Mr. Worton before it closed
14 and then I talked to Mr. Morrison after it closed and
15 just chitchatting about it, probably.

16 Q. Was it your understanding that the \$2.8
17 million that was being requested was going to be
18 sufficient to fund this project?

19 A. Yes, to get him going strong, yes.

20 Q. It's your belief that if they had received a
21 \$2.8 million loan, that the Southern Hills project that
22 was being proposed by Mr. Morrison would be able to move
23 forward and would have financing to move forward?

24 A. Yes.

25 Q. Was it your belief that that was Mr.

1 Morrison's intent, was that he was going to develop this
2 project?
3 A. Yes.
4 Q. Was it your belief that the Bank of Commerce
5 loan was just a bridge loan? Do you know what a bridge
6 loan is?
7 A. Yes. I don't know that it was really a bridge
8 loan. It wasn't just to get him started.
9 Q. It wasn't just to bridge the time to buy some
10 time until he could bring in an investor or find another
11 loan?
12 A. No.
13 Q. And that was something you determined, again,
14 based upon your review of the loan packet or the
15 application packet as you call it?
16 A. Yes.
17 Q. Now, the request, the \$2.8 million, that
18 wasn't a surprise to you that the bank didn't approve a
19 \$2.8 million loan, was it?
20 A. No, it wasn't a surprise.
21 Q. In fact, in your experience with lending, it's
22 very common that someone makes a request and the lender
23 actually doesn't approve that request, isn't it?
24 A. Yes.
25 Q. And as you sat in your office, I believe you

1 said it was on April 21 of 2006, the first time you met
2 with Mr. Worton --
3 A. Yes.
4 Q. At the end of that meeting there was no loan
5 commitment made by Mr. Worton, was there?
6 A. No.
7 Q. I was curious about your 1 percent fee. And
8 you claim you talked with Mr. Worton about that?
9 A. Yes.
10 Q. And did you ever have discussions with anyone
11 other than Mr. Worton about this 1 percent commission?
12 A. No.
13 Q. And after the fact, when you supposedly
14 weren't paid that, you didn't ever complain to the bank?
15 A. No.
16 Q. Did you complain to anyone?
17 A. Mr. Worton.
18 Q. But other than complaining to Mr. Worton, you
19 didn't ever complain to anyone else at the bank?
20 A. No.
21 Q. I believe, I want to make sure I understood
22 your testimony, you had this meeting on April 21, 2006,
23 and I believe you said that there was Mr. Worton,
24 yourself, Mr. Morrison, your assistant, Donna Andrews.
25 Was there also an Andrew someone there?

1 A. No, I think whoever wrote that, it was Donna
2 Andrews. I don't know who Andrew would have been.
3 Q. You say whoever wrote what?
4 A. Whoever said that.
5 Q. Did you see something that referenced some
6 other Andrew?
7 A. Yes, I did.
8 Q. Where did you see that at?
9 A. In the interrogatories.
10 Q. So someone had provided you those before you
11 came today?
12 A. No, I just seen them today.
13 Q. Now, you talked about how you never prepared
14 another version of your Deposition Exhibit No. 1. I'll
15 have you look at this document (indicating). Does that
16 look very familiar to your Deposition Exhibit No. 1?
17 A. Yes.
18 Q. Have you ever seen that?
19 A. Well, I wrote it.
20 Q. Is it identical to that?
21 A. I don't know. No, it's not. I don't know
22 that.
23 Q. I am going to represent to you that this was
24 provided to me during discovery. Does that change your
25 recollection about statements you may have written?

1 A. I have not read it. Right now. I mean if I
2 did it, I did it. I mean this has been several years.
3 So I can read it.
4 Q. But I mean you would remember, wouldn't you,
5 if you made multiple statements?
6 A. No.
7 Q. So --
8 A. I mean if I would have added to it, I probably
9 could have. I don't know. I think that I only gave it
10 once to this man, Mr. Morrison.
11 Q. Is this something that you are thinking about
12 constantly and you think, you know what, maybe I forgot
13 something in that other statement, I think I am going to
14 change that and send it to Mr. Morrison?
15 A. I have not thought about this for a few years.
16 Q. Is it fair to say that if you made a change,
17 that Mr. Morrison came to you and said, hey, is this
18 really what happened or is there a way to change this?
19 A. No.
20 Q. Why would you change it?
21 A. I may have thought of something else to put in
22 it. But Dustin never came to me and said this isn't
23 right. He asked me to put in my own words what I
24 thought and remembered of my events.
25 Q. But you don't ever recall giving him multiple

1 versions of that.
 2 A. No.
 3 Q. We'll come back to that in a minute. You talk
 4 about in your statement there that you worked a little
 5 bit with D.L. Evans. Do you recall that?
 6 A. Yes.
 7 Q. Do you recall when the Southern Hills project
 8 was approved by the City of Pocatello?
 9 A. No.
 10 Q. Do you recall how long you worked with D.L.
 11 Evans?
 12 A. I didn't work with them, I just went in and
 13 talked to them about Dustin's loan.
 14 Q. Do you know how long Dustin Morrison had been
 15 working with D.L. Evans?
 16 A. No, I do not.
 17 Q. Your primary experience is in home residential
 18 lending; correct?
 19 A. Correct.
 20 Q. What's the typical turn-around time for a
 21 person to get financing on a home?
 22 A. It used to be probably 30, 45 days.
 23 Q. You say used to be. Has that changed?
 24 A. Yes, sir, it has. The reason I quit my
 25 business is because I couldn't get anything to turn

1 understanding of those be favorable terms?
 2 A. That he had a zero interest loan and that he
 3 could have it paid off in I think it was four years or
 4 five years.
 5 Q. And that exhibit that was attached to your
 6 Deposition Exhibit No. 1, that was a note, is that the
 7 80 Acres, Inc., loan?
 8 A. Yes.
 9 Q. So when you say there was no interest, doesn't
 10 Paragraph 2 say that there was --
 11 A. A 4.75, low interest, no interest. It was one
 12 that he did not want to pay off -- it was my
 13 understanding there was zero interest and he paid so
 14 much a year for the interest or for the loan. But he
 15 did not owe that much and it was worth a lot. And in my
 16 notes I have that there was 80 Acres, Inc., for
 17 \$225,000, plus \$35,000 was zero interest. That's in
 18 these notes that I have.
 19 Q. Those are your handwritten notes.
 20 A. Yes. And the 35,000 is what they would pay a
 21 year for that.
 22 Q. Do you know what was driving the deadline that
 23 Mr. Morrison had for this loan?
 24 A. My recollection is that if it didn't close on
 25 a certain date, that he would not be able to purchase it

1 around any sooner than 90 to 120 days.
 2 Q. So currently things have changed a little bit.
 3 A. Yes, they have.
 4 Q. But in the timeframe we are talking about
 5 here, 2006, financing was moving a little quicker than
 6 normal.
 7 A. Yes.
 8 Q. So a quick loan that in those days, in the
 9 heat of the battle, back in the good old days, was 30 to
 10 45 days for a residential loan.
 11 A. Yes.
 12 Q. Was that pretty quick?
 13 A. Yes.
 14 Q. How about commercial loans?
 15 A. Well, the ones that I had done before this
 16 one, they usually took a couple of months. It all
 17 depends how you could get everything together, taxes and
 18 stuff.
 19 Q. But commercial loans are much more complicated
 20 typically than a residential loan; correct?
 21 A. Yes.
 22 Q. There has been, I think your statement refers
 23 to these favorable terms as it relates to the 80 Acres
 24 loan or the 80 Acres, Inc., loan and that property.
 25 What were the favorable terms, what was your

1 because there was other people that was interested in
 2 that property and the seller would sell it to them.
 3 Q. As you sit here today, do you recall what the
 4 drop dead date in your mind was?
 5 A. I don't.
 6 Q. If you would look at Deposition Exhibit No. 1,
 7 on the first page --
 8 A. May 30.
 9 Q. So May 30, 2006, based on your notes, was the
 10 drop dead date that Mr. Morrison had to complete the
 11 Wood financing.
 12 A. Correct.
 13 Q. Do you know when the loan with the Bank of
 14 Commerce closed?
 15 A. No, I do not, I don't recall that date.
 16 Q. Your April 21, 2006, meeting with Mr. Worton
 17 and Mr. Morrison and yourself and Donna, other than that
 18 meeting, that was the only meeting where all of you were
 19 together; is that correct?
 20 A. No, we met a couple other times to go over
 21 more of it, I think.
 22 Q. So when were these other meetings that you
 23 had?
 24 A. Boy, I don't remember; I don't know the dates.
 25 I do know that Steve came by a couple of times in my

1 office, Mr. Worton, and picked up things and --

2 Q. Maybe we are misunderstanding each other. I
3 understood you to testify that Mr. Worton came by and
4 picked up some things. But I am talking about another
5 meeting where all of you were together again in the same
6 meeting, I mean you, Dustin Morrison, Steve Worton. Was
7 there ever another meeting where the three of you and
8 maybe Donna got together again?

9 A. I think there were at least one other time.

10 Q. And you have notes from your April 21 meeting.
11 Do you typically keep notes of your meetings?

12 A. I did, yes.

13 Q. But you don't have notes from any other
14 meetings?

15 A. I don't have all of my stuff because I have
16 closed my office and I probably had some but I had given
17 my stuff to Mr. Larson that I did have. But when I
18 moved out of my office, some of it could have got
19 misplaced, I don't know.

20 Q. So Mr. Larson requested various documents from
21 you and you provided them to Mr. Larson?

22 A. He didn't request them, I just gave him
23 everything that I had.

24 Q. You just were walking along one day and
25 thought I am going to take over some stuff to Mr.

1 Larson?

2 A. No, I had met with Mr. Larson one time prior
3 to this, I think it was a year or two ago, and I just --
4 he wanted to talk to me about this particular file, so I
5 just took everything with me that I had in a box and I
6 gave it to him.

7 Q. So what else was there besides your one-page
8 note here from April 21, 2006, this current statement
9 that's Deposition Exhibit No. 1, what was in the rest of
10 the box?

11 A. Like appraisals and the taxes; everything that
12 I had collected that I had not given to Mr. Worton or
13 copies of I kept.

14 Q. So as you were gathering that information, did
15 you go back through your other pages of notes to see if
16 you had other notes from meetings with Mr. Worton and
17 Mr. Morrison?

18 A. I probably did, yes, that's how I came up with
19 this (indicating).

20 Q. But you didn't find any other meeting notes?

21 A. I didn't look for this meeting. I mean I
22 didn't know anything about it until Saturday.

23 Q. What do you mean you didn't know anything
24 about this until Saturday?

25 A. I didn't know about this deposition; I got a

1 subpoena.

2 Q. But when you looked for these notes, that was
3 several years ago; is that right?

4 A. Yes. Well, it was when I (indicating) -- back
5 in 2007.

6 Q. But at that time before you had lost a lot of
7 documents or they were misplaced, you didn't find any
8 other notes other than this particular note?

9 A. No.

10 Q. And you don't recall any discussions during
11 your April 21, 2006, meeting of subordinating Mr.
12 Morrison, having his lender subordinate to the bank on
13 this 80 Acres, Inc., property?

14 A. No.

15 Q. I believe you testified that at some point Mr.
16 Worton called you and told you that the bank's board had
17 approved a loan.

18 A. Yes.

19 Q. And do you know what date that was?

20 A. I do not.

21 Q. Prior to this deal with Mr. Morrison and the
22 Bank of Commerce, had you worked with Mr. Morrison on
23 other loans?

24 A. No.

25 Q. Have you worked with any of his companies on

1 other loans?

2 A. No.

3 Q. The Deposition Exhibit No. 1, the current
4 version of your statement, there are several references
5 to this commission that you talked about. I am going to
6 represent to you there is zero references to a
7 commission in your original statement.

8 A. That's probably why I redid it.

9 Q. Because you remembered that later on?

10 A. Oh, I never forgot it.

11 Q. You apparently forgot it at one point when you
12 prepared this (indicating).

13 A. Well, I don't know why, but I didn't work for
14 free. So I know I talked to Steve about it right up
15 front.

16 Q. Did you talk to Mr. Morrison about any fees?

17 A. No.

18 Q. Is that typically how you operate, is that the
19 lender that you find pays your fee?

20 A. Yes.

21 Q. Not the person that you initially make contact
22 with, Mr. Morrison.

23 A. Exactly.

24 Q. So were you upset with Mr. Worton when you
25 didn't get paid a commission?

1 A. You know, I was upset. You know, I could have
2 went someplace else and complained about it, but it
3 wouldn't have done me any good and I just would have had
4 to hire an attorney, which would have cost me more
5 money, no offense. And I was hoping that when Dustin
6 got going, that I could go and do some of the loans for
7 his, so I figured it would all turn out okay. But, yes,
8 I was upset.

9 Q. In questioning by Mr. Larson he asked you
10 specifically about the second page here, where it says,
11 "The financing terms that specified that 80 Acres, Inc.,
12 would retain first position were clearly spelled out in
13 the contract which I personally provided to Mr. Worton."

14 And your testimony was that that was this note
15 (indicating); is that right?

16 A. Yes.

17 Q. Where does it say it would retain the first
18 position was clearly spelled out in the contract?

19 A. I would have to read the whole thing.

20 (Pause in proceedings.)

21 (Deposition Exhibit No. 2 marked for
22 identification.)

23 A. I don't see that it says anything about it, a
24 subordinate. Financing terms that specify the 80 acres
25 retain first position were clearly spelled out in the

1 contract which I personally provided to Mr. Worton, just
2 saying that he had to pay them and had to do them on
3 time and his annual payments and everything was probably
4 what I meant by that.

5 Q. Say that again.

6 A. That he would have to pay his payments of
7 \$35,000 a year and it just spelled out how he had to pay
8 this.

9 Q. But this note that's attached here doesn't
10 have anything to do with that statement, does it?

11 A. No.

12 Q. I am going to hand you what's been marked
13 Deposition Exhibit No. 2, which is a copy of your notes.

14 A. Okay.

15 Q. On there you have the date from the April 21,
16 2006, meeting, and then you have two other meeting notes
17 that you mentioned, on April 25, 2006, and then April
18 26, 2006. Was it your practice to write down when you
19 had conversations or discussions regarding this project,
20 would you make a note of it?

21 A. I did on most of my stuff.

22 Q. That was your normal course of practice.

23 A. Yes.

24 Q. And in this case these are the only three
25 entries that you have that relate to this particular

1 project; is that correct?

2 A. That I know of.

3 Q. It's your belief that you had other
4 conversations that you didn't note in your log; is that
5 right?

6 A. Yes.

7 Q. Even though that would be atypical for what
8 you would normally do?

9 A. I would say no. I would have conversations
10 and not write them down. In all of my other -- it was a
11 practice that every time I would talk to someone,
12 because it would cover your hiney to write it down. I
13 probably would say I may have had it in my Daytimer. I
14 can find that, I hope.

15 MR. TUCKER: Let's take a quick break.

16 (Short recess.)

17 MR. TUCKER: Back on the record.

18 Q. (By Mr. Tucker.) One of the other differences
19 between your statements is the statement added to
20 Deposition Exhibit No. 1 that said that Mr. Worton had
21 to fight with the loan board. When did he tell you
22 that?

23 A. Before it closed.

24 Q. Do you know how much time there was between
25 the time that the loan was approved and the loan closed?

1 A. I do not.

2 Q. Another difference here is it says, the last
3 sentence, I believe it is, in Deposition Exhibit No. 1,
4 "I would think that the details of the loan were
5 thoroughly discussed with Mr. Worton" and then what was
6 added was and the board, "so if there was an oversight,
7 both the board and Mr. Worton are responsible." So you
8 added both the board in that situation.

9 Did you have any dealings with the board of
10 directors of Bank of Commerce?

11 A. No.

12 Q. What was the basis for changing your statement
13 to include the board of directors there?

14 A. Just probably thinking of other things that
15 went through my head as I was typing it, probably typed
16 one and then typed the other and put them all in my
17 file.

18 Q. But specifically to change and add the board,
19 you didn't have any dealings with the board?

20 A. No, I did not. But Mr. Worton had told me he
21 was having a hard time convincing the board to do this
22 loan and then he had to fight for the loan. So I
23 imagine that he would go with the board and they would
24 have to go over all the details. I have never been in a
25 board meeting at a bank so I don't know what they do.

1 Q. You changed your statement to include the
2 board of directors for some reason?
3 A. Because they were part of the process for the
4 loan.
5 Q. But you don't know what was discussed there.
6 A. No, I do not.
7 MR. TUCKER: I think that's all I have.
8 RE-EXAMINATION
9 BY MR. LARSON:
10 Q. I would like to ask you about the documents
11 that you had. You had a file with documents; right?
12 A. Right.
13 Q. And in that file were both of these copies
14 there (indicating), to your knowledge?
15 A. Yes.
16 Q. There was some earlier questioning by Mr.
17 Tucker about did you have any prior versions and so on
18 and so forth and you said no or didn't recall. Now that
19 you see both of these documents, can you explain why
20 there aren't two separate documents?
21 A. Well, after Mr. Morrison came and asked me if
22 I would do some accounting of my events, I probably
23 started writing it and then came back to it and added to
24 it, probably went over it a couple times, more or less,
25 probably ten times to make sure I got everything, and

1 probably just added to it. And there is probably, you
2 know, me, I just don't sit down and write everything and
3 just forget it, I probably wrote it and then added other
4 things to it as they came to my mind.
5 Q. In the information that you had in your file
6 were there any other handwritten notes that you found or
7 delivered to my office than those that were produced
8 here today?
9 A. I would have to go through that box and stuff
10 and look. I am not really sure.
11 Q. Do you want to do that?
12 A. I could do that. Do you want me to go get
13 them?
14 Q. Yes.
15 (Short recess.)
16 MR. LARSON: On the record.
17 Q. (By Mr. Larson.) Pam, I brought in this box.
18 Is that the box of documents that you had?
19 A. Yes, it is.
20 Q. And, to your knowledge, are there any other
21 notes that you made that would be in this box that were
22 not produced as far as your handwritten notes of
23 meetings?
24 A. I'm looking through them right now.
25 MR. LARSON: Let's go off the record now and

1 we'll give you a chance to go through them.
2 (Discussion off the record.)
3 MR. LARSON: Back on the record.
4 Q. You went through this box and looked for
5 handwritten notes and you found some handwritten notes.
6 Are there any others that you have either in your
7 possession now, other than in this box?
8 A. No.
9 Q. So with these two separate statements, would
10 it be fair to say that one is a draft and the other one
11 is the final document?
12 A. Yes, it would be.
13 Q. Do you have any other documents in relation to
14 this that you know of?
15 A. No.
16 Q. In the documents that you fished out of the
17 box, there are four of those. One of them is a document
18 that just has a handwritten note on it that says income
19 statements.
20 A. Yes.
21 Q. It's bound. What are the other three
22 documents that you pulled out.
23 A. Okay, it looks like I just had 80 Acres, Steve
24 Gallafent. It's just some handwritten notes. I don't
25 know who wrote them, but I do know that I can recognize

1 my writing about 640,000, 75 to 80 percent, which would
2 be what they would probably loan on for the loan. Will
3 sell lots first and pay off debts. This could be
4 Donna's note, I am not real sure of that.
5 And then there is a fax that I made on 4/28 to
6 Steve and it says, "Steve, Dustin said that 2.24 million
7 will go to pay off the land and the rest is to pay
8 himself back." And I sent documents with that.
9 And then on May 5 to Steve there was Covenants
10 for Dustin, the Southvalley Amendments/Additions to
11 Draft Real Covenant and Annexation Agreement that I
12 faxed to him on May 5.
13 Q. So any other handwritten documents that you
14 recall that aren't here produced today?
15 A. None that I recall, no.
16 Q. I just want to go on to a couple other things.
17 Which of those two statements did you intend to be the
18 final draft?
19 A. The one that is marked as Exhibit No. 1.
20 Q. And that's the statement that you intend to be
21 the actual recollection in your accounting of events,
22 Deposition Exhibit No. 1.
23 A. Yes.
24 Q. I guess Exhibit No. 1 is the one that you
25 intended to be the one that everyone -- or the one that

1 would be the final recollection of what you had done?

2 A. Yes.

3 Q. Do you recall when those documents may have
4 been left at my office in the box, would it have been in
5 2007? Would it have been later than 2007?

6 A. I think it would be later than 2007. They
7 were left I would say probably around two years ago.

8 Q. 2009 or 2010?

9 A. Yes.

10 Q. Long after you had written those documents.

11 A. Yes.

12 Q. Did you have any other conversations with
13 Steve Worton about the board? It was mentioned in this
14 accounting. Did you have other conversations with Steve
15 Worton about the board or what the board did or said?

16 A. The one conversation I had with him was that
17 the board is requiring that they be in first place on
18 that property on the 80 Acres before they would make the
19 deal.

20 Q. Did you receive any information on if there
21 was any dissension in the board when the loan was
22 approved?

23 A. No.

24 Q. Did you discuss that directly with Mr. Worton?

25 A. About the board?

1 Q. One of these handwritten notes that you had,
2 is this 80 Acres or is that 8.08?

3 A. I'm not sure. That isn't my handwriting. I'm
4 thinking it should be 80 Acres. I don't know. This
5 (indicating) is my handwriting here.

6 Q. So just the --

7 A. The numbers.

8 Q. -- the numbers are yours. We talked a little
9 bit about that lenders don't always approve your
10 requests. You said that's not uncommon.

11 A. Correct.

12 Q. What's the difference between the board of the
13 bank deciding they would only loan -- I mean there was
14 nothing wrong with the bank saying we are only going to
15 loan 2.2 on this project, was there?

16 A. No.

17 Q. What's wrong with the bank saying we are only
18 going to make that loan if we are in first position on
19 all the property, isn't that a prerogative they have?

20 A. Well, I would say it is, but they should do it
21 not the day before they close the loan.

22 Q. You don't know when the loan was actually
23 approved?

24 A. I do not know. I do know if they were going
25 to do it, they should have done it before that.

1 Q. About the board and the vote on the loan.

2 A. I think we just talked about how that they
3 would not budge, that he had to have -- they had to have
4 that so they were in first position before the loan.

5 MR. LARSON: That's all I have.

6 RE-EXAMINATION

7 BY MR. TUCKER:

8 Q. Donna Andrews, where does she live now?

9 A. She lives in Pocatello up by Hoot Owl Road.

10 Q. Who is she employed by now?

11 A. I have no idea. We don't speak.

12 Q. Why not?

13 A. We kind of got in a little tiff over the whole
14 deal. Not over this (indicating) but just the business.

15 Q. Just when your business closed down?

16 A. Yes.

17 Q. You didn't leave on necessarily good terms.

18 A. No, sir.

19 Q. Do you know how to get ahold of her?

20 A. I do not.

21 Q. There was a reference to a Steve Gallafent.
22 Who is that, do you know?

23 A. I don't know who he is; I don't know if he
24 is -- I think he is an attorney. Or if he was a board
25 member.

1 Q. They should have communicated that once that
2 was decided; right?

3 A. Correct.

4 Q. But other than that, that is just a lender's
5 prerogative, they can say we will do this loan on these
6 terms; correct?

7 MR. LARSON: Objection, calls for speculation.

8 MR. TUCKER: She has expertise supposedly in
9 this area dealing with lenders.

10 A. Yes, but I believe that when they do it,
11 before they fill out the terms of the loan, they should
12 tell you what the terms of the loan are and not the day
13 before you close or a couple of days before you close.
14 My recollection is that they came up with this the day
15 before they were going to close.

16 Q. What if the loan was approved the day before
17 this loan closed?

18 A. The loan was approved.

19 Q. What if that was the first time that loan was
20 approved?

21 A. Well, that would be all right, but then you
22 would know what the terms are.

23 Q. So you would know the day before because
24 that's when the loan was approved?

25 A. Yes.

1 Q. There would be nothing wrong with that, would
2 there?
3 A. There would if you had to come up with
4 \$600,000.
5 Q. That's not the bank's problem, is it?
6 A. Well, I think it is.
7 Q. Why is that?
8 A. Because how can anybody come up with that kind
9 of money when -- it's like me buying a house, saying
10 that you have got to come up with 30 percent of the
11 house on the day before you close. I mean nobody can do
12 that.
13 Q. But you don't know when the loan closed --
14 A. No, I do not.
15 Q. You don't know when the loan was approved and
16 you don't know when that was in relation to Mr.
17 Morrison's deadline of May 30?
18 A. I do not know, but I do know that -- I don't
19 recall the date but I do know that the day before they
20 were to close that Dustin was alerted that he had to pay
21 this off. I don't know the date.
22 MR. TUCKER: Let's go off the record.
23 (Discussion off the record.)
24 (Deposition Exhibit Nos. 3 and 4 marked
25 for identification.)

1 Q. I am going to hand you, starting with
2 Deposition Exhibit No. 4, is that kind of a summary or
3 prospectus of the loan for this property we have been
4 talking about today that you sent out to different
5 lenders?
6 A. Yes.
7 Q. And then Deposition Exhibit No. 3, is that a
8 fax cover sheet for something that you sent to a
9 particular lender?
10 A. Yes.
11 Q. What's the date of that?
12 A. October 6, 2005.
13 Q. Were you working on this project clear back in
14 2005?
15 A. Must have been, for the first part of it
16 probably. Probably working on it, trying to find
17 somebody to do it.
18 Q. You were just out trying to find financing
19 from wherever you could find it.
20 A. Right.
21 Q. Looking again at Deposition Exhibit No. 4, the
22 Subparagraph 3 here (indicating), what does that say?
23 A. "Subordination of first position to the bank
24 for a revolving line for development."
25 Q. So there was some discussion at least in that

1 proposal of the subordination of the first?
2 A. Must have been.
3 Q. That would have been the investor request that
4 you sent Mr. Worton --
5 A. I don't know that I ever sent him that.
6 Q. But that's what you were sending to all of the
7 other investors.
8 A. Yes. That was back in 2005.
9 MR. TUCKER: Let's go off the record again.
10 (Discussion off the record.)
11 MR. TUCKER: Back on the record.
12 Q. (By Mr. Tucker.) I don't want to make these
13 an exhibit, but if you could just look through those.
14 Those look to me to be a series of home loans that were
15 offers and different things on various home loans.
16 A. I think that what these were is just to show
17 that they had the upcoming money and stuff. It was from
18 Shauna to Gayla, I think at that time Gayla was -- she
19 was one of the -- a secretary for one of the brokerages
20 I think that Sonya worked for. These were just to show
21 what they had in the makings of selling --
22 Q. So were you involved in any of these
23 transactions?
24 A. No, I was not. They were just things that we
25 had collected from Morrison.

1 Q. This was just to show different homes that
2 they were either under contract or were being sold or
3 had been sold.
4 A. Yes.
5 MR. TUCKER: Let's go back off the record.
6 (Discussion off the record.)
7 MR. TUCKER: Let's go back on the record.
8 Q. This file has some documents of Charles
9 Burrup. Is he from Wells Fargo, do you know who that
10 is?
11 A. I don't recall.
12 Q. Do you recall working with Wells Fargo to try
13 to obtain financing?
14 A. I probably sent him -- I don't remember.
15 Q. How about, I don't even know how to say this
16 name, I think it's the same person here (indicating),
17 does that name ring a bell?
18 A. It does.
19 Q. Just take a stab, I have no idea.
20 A. Gligorovic. It was a doctor --
21 MR. DUSTIN MORRISON: Gligorovic.
22 A. Gligorovic that Dustin was working with.
23 Q. This was someone else that you were working
24 with to try to find financing for this project?
25 A. For a different project.

1 Q. This was a different one.
 2 A. Yes. But it still was with Dustin.
 3 Q. I thought this loan for the Southern Hills was
 4 the only one that you were involved with. Were you
 5 involved with other loans with Dustin?
 6 A. Afterwards. This doctor and Dustin were going
 7 to build some houses. But it never happened. It was
 8 afterwards.
 9 Q. Is it safe to say you were beating all the
 10 bushes you could to try to find finances?
 11 A. Yes, I was.
 12 (Deposition Exhibit Nos. 5, 6, and 7
 13 marked for identification.)
 14 Q. We have already talked about these exhibits
 15 but I think just for clarity it would be helpful to have
 16 them marked. We have Deposition Exhibit No. 5 which I
 17 believe is a fax you sent to Steve Worton; is that
 18 right?
 19 A. Yes, on May 5.
 20 Q. You were still providing him information on
 21 May 5.
 22 A. Yes.
 23 Q. And then Deposition Exhibit No. 6 is another
 24 fax that you sent actually earlier than that on the 28th
 25 of April, again to Mr. Worton?

1 CERTIFICATE OF PAMELA K. WAKE
 2
 3 I, PAMELA K. WAKE, being first duly sworn, depose
 4 and say: That I am the witness named in the foregoing
 5 deposition; that I have read said deposition and know
 6 the contents thereof; that the questions contained
 7 therein were propounded to me; and that the answers
 8 therein contained are true and correct, except for any
 9 changes that I may have listed on the Change Sheet
 10 attached hereto.
 11 DATED this ___ day of _____,
 12 CHANGES ON ERRATA SHEET YES ___ NO ___
 13
 14 _____
 15 PAMELA K. WAKE
 16 SUBSCRIBED AND SWORN to before me this ___ day
 17 of _____,
 18
 19 _____
 20 NAME OF NOTARY PUBLIC
 21 NOTARY PUBLIC FOR _____
 22 RESIDING AT _____
 23 MY COMMISSION EXPIRES _____
 24
 25

1 A. Yes.
 2 Q. And Deposition Exhibit No. 7 is a handwritten
 3 paper but the handwriting, as I understand it, your
 4 handwriting is only the numbers that I am going to
 5 highlight in yellow. Is this the area that is yours?
 6 A. Yes.
 7 Q. I am going to highlight the area that is your
 8 handwriting with the yellow highlighter (indicating).
 9 The rest of that exhibit is not your handwriting; is
 10 that correct?
 11 A. That's correct.
 12 MR. TUCKER: Okay, that's all.
 13 MR. LARSON: We have no further questions.
 14 (Witness excused at 11:42 a.m.)
 15 (Signature requested.)
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 CHANGE SHEET FOR PAMELA K. WAKE
 2 PAGE__ LINE__ REASON FOR CHANGE _____
 3 READS _____
 4 SHOULD READ _____
 5 PAGE__ LINE__ REASON FOR CHANGE _____
 6 READS _____
 7 SHOULD READ _____
 8 PAGE__ LINE__ REASON FOR CHANGE _____
 9 READS _____
 10 SHOULD READ _____
 11 PAGE__ LINE__ REASON FOR CHANGE _____
 12 READS _____
 13 SHOULD READ _____
 14 PAGE__ LINE__ REASON FOR CHANGE _____
 15 READS _____
 16 SHOULD READ _____
 17 PAGE__ LINE__ REASON FOR CHANGE _____
 18 READS _____
 19 SHOULD READ _____
 20 PAGE__ LINE__ REASON FOR CHANGE _____
 21 READS _____
 22 SHOULD READ _____
 23
 24 DEPONENT SIGNATURE: _____
 25

REPORTER'S CERTIFICATE

I, PAUL D. BUCHANAN, CSR NO. 7, Certified
Shorthand Reporter for the State of Idaho, certify:

That the foregoing proceedings were taken before
me at the time and place therein set forth, at which
time the witness was put under oath by me;

That the testimony and all objections made were
recorded stenographically by me and were thereafter
transcribed by me, or under my direction;

That the foregoing is true and correct record of
all testimony given, to the best of my ability;

I further certify that I am not a relative or
employee of any attorney or party, nor am I financially
interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this
11th day of November, 2011.

Paul D. Buchanan

PAUL D. BUCHANAN, CSR, RPR, RMR
Notary Public
P.O. Box 2636
Boise, Idaho 83701-2636
My Commission expires: June 20, 2016

My Accounting of Events Leading to the Financing of S.H.

Introduction

I contacted Dustin Morrison after seeing that he had received final approval from the City of Pocatello for his Southern Hills development.

My interest was to be involved with the finance brokering of this project, to help both parties and to make a commission.

Mr. Morrison had been working with Kim Weber at D.L. Evans but was not receiving the support that he wanted. They wanted to borrow less than the 2.8 million dollars. They offered to finance 2.2 million dollars for the purchase of the land if Mr. Morrison provided a cash deposit equal to 1 year's interest in an interest bearing interest reserve account.

Mr. Morrison had a pre-approved subdivision. The appraisal on the 80 acres inc. piece of the Southern Hills Subdivision was for \$1,680,000.00. The appraisal on the Mike Wood piece of the Southern Hills Subdivision was for \$5,320,000.00. The 80 Acres Inc. Piece was already under contract and had no financing needs. It was being carried by the selling corporation with very favorable terms. The appraised value of this piece was far in excess of the debt owed so a second position of substantial value on this piece could be offered as additional collateral on the loan for the Mike Wood piece. The Mike Wood piece required a 2.2 million dollar loan to close by May 30th 2006. Mr. Morrison was after 2.8 million dollars so he could pay his companies back the money spent to change the lands designated use, zoning, annexation, and entitlement approvals. I felt that this project had great value compared to need and that I could help with this.

Mr. Morrison provided me with a copy of a market and feasibility analysis, the appraisals, an in depth business plan, a development cost breakdown, a thorough debt and payback schedule and agenda, the contracts and terms with 80 Acres Inc., the Mike Wood contract, and a loan request. I took this to a few contacts, including Steve Worton with the Bank of Commerce.

The Deal

Mr. Worton was very interested in being a part of this. I then discussed with him the commission or finders fee and he said to work up a paper indicating what percentage I wanted, which we had discussed 1 percent. I set up a meeting with him and presented the project and request. Mr. Worton wanted to pursue this so I sat up a meeting with him and Dustin Morrison. Mr. Morrison went over the project in depth with Mr. Worton. Mr. Morrison went over his wishes for financing. Mr. Morrison specifically requested \$2.8 million dollars in exchange for a first position on the Mike Wood pieces of land and a second position on the 80 Acres Inc. pieces that were already financed long term. At this time Mr. Morrison specifically said that the parties involved in the 80 acres would not take a second position on the land. Mr. Worton came back saying that the Board would offer a loan in the amount of \$2.2 million dollars and an annual interest payment due at the end of the year. Mr. Morrison found this very acceptable and so he did not continue to look for financing elsewhere. At this time Mr. Worton told me I would not receive a commission or a finder's fee and would have to get it from Mr. Morrison. Now please keep in mind this is a lot of money to a bank and I was the one that made the contact. I felt that I was shafted but I did not want to ruin Mr. Morrison's deal and hopefully I

could get some of the home loans when the project was started so I did not make a fuss. Mr. Morrison then informed me some time after the date of closing that there was some type of misunderstanding the day before the last day to close. He informed me that for some reason Mr. Worton had failed to inform the Bank of Commerce Board of Directors that the 80 Acres Inc. piece did not require financing and was being offered as collateral only as a second position. This was discussed many times during the process of this loan. Mr. Morrison then informed me that he was required to purchase a first position by paying off a no interest contract at full price in order to provide this first position to the bank or financing for the Mike Wood land would not be made available. I was blown away, the day before closing and to come up with that much money when all along it was known that the people in the contract for the 80 acres would not take second position. I told Mr. Morrison that there was no reason for any misunderstanding as this information was spelled out in the package that all could have and should have reviewed at any time. I reminded Mr. Morrison that I specifically went over this with Mr. Worton and was present when Mr. Morrison did as well. On page 3 of the "Financial Requisites and Realizations" section of Mr. Morrison's package, which I personally provided to Mr. Worton it spells out perfectly clearly the terms of the remaining debt on the 80 Acres Inc. land. The actual contract between Mr. Morrison and 80 Acres Inc. was also provided in the package stating in section "D" under "3. Payments" specifically how the first position would be released to Mr. Morrison as Mr. Morrison performed the requirements of the contract. How could this have been missed unless it simply wasn't reviewed? I know this was covered with Mr. Worton as I was present when it was.

Mr. Morrison replied "Well, I'll just do the best I can do to get a partner by October and if I can't I guess I'll just have to sell it. He had less than 48 hours to act or he would have lost it. I had no back up plan because of Steve's commitment. I don't know if I did the right thing or not. I guess time will tell." I wished Mr. Morrison the best and told him to let me know if I could help him.

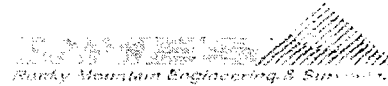
Mr. Morrison contacted me again on May 21st, 2007 and told me that he'd tried everything with no luck. Mr. Morrison asked me if there was any possibility that his request to Steve was not clear. He asked me if there was ever a mention by Steve of requiring a 1st position on the 80 Acres Inc. land. I replied, "Absolutely not and it was quite clear that you did not desire to replace the financing on the 80 Acres Inc. land." He then asked me to write down my recollection of the events leading up to the commitment from Mr. Worton in relation to my understanding of Mr. Morrison's request and what was being offered by Mr. Morrison for it, as well as my understanding of Mr. Worton's understanding of Mr. Morrison's request and Mr. Worton's offer.

Conclusion

There could not have been a misunderstanding. I specifically presented this package to Mr. Worton. I was present when the request and terms required were discussed with Steve Worton by Dustin Morrison. A 2.2 million dollar loan was the minimum requirement but Mr. Morrison was after a 2.8 million dollar loan to purchase a first position on the Mike Wood Piece and was offering a second position on the 80 Acres Inc. piece already under long term financing. The financing terms that specified that 80 Acres Inc. would retain first position were clearly spelled out in the contract which I personally provided to Mr. Worton. These terms were an asset to this project and were

represented on the cover of the debt service schedule which I personally provided to Mr. Worton. Mr. Worton said that he had to fight for this loan with the Board. I would think that the details of the loan were thoroughly discussed with Mr. Worton and the Board, so if there was an oversight, both the Board and Mr. Worton are responsible and Mr. Morrison should not have to pay for the consequences.

Southern Hills



Mike Wood land at \$2,000,000.00 balance plus 2 years @ 5% interest plus \$40,000 fees	\$2,240,000.00
Direct development expenses to date	\$300,000.00
a. Bill and Brad for their expenses toward earnest money and engineering costs paid through July 31, 2005	\$140,000.00
b. Rocky Mountaing Engineering and Survey to date	\$90,000.00
c. City annexation and master plan approval process	\$50,000.00
d. Market analysis and appraisal to date	\$20,000.00
80 Acres Inc. Paid	\$77,000.00
80 Acres Inc. debt with DL Evans	\$166,000.00
80 Acres Inc. Paid	\$35,000.00
Total Land Purchase to date	\$2,838,000.00

Total remaining balance on land after \$2,838,000.00 is \$598,767.00

a. March 1st 2007	\$35,000.00 is due
b. March 1st 2008	\$35,000.00 is due
c. March 1st 2009	\$35,000.00 is due
d. March 1st 2010	\$35,000.00 is due
e. March 1st 2011	\$494,000.00 is due
Total balance of	\$598,767.00 paid

Equity ACC
Legal Representative: Ashley Lyman
1114 Randall First Court
Moscow, Idaho 83843

NOTE

March 1, 2005

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$633,767.00. (this amount is called "principal") plus interest, to the order of the Lender. The Lender is Equity Acres, Legal Representative: Ashley Lyman. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of 4.75%. The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(D) of this Note. This interest shall be waived if all payments are made as agreed, which is referenced under sections 3 and 4 of this Note. (See below.)

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments annually on March 1st of each year and through the Maturity Date of this Note. The first payment will be on March 1, 2006. The payment, also known as the Balloon payment, will be made on March 1, 2010. March 1st, 2010 is the Maturity Date of this Note.

I will make my required payments at Northern Title Company, 1523 Yellowstone Ave. Pocatello, Idaho, or at a different place if required by the Note Holder.

(B) Amount of Annual Payment

Each of my annual payments prior to the Balloon Payment due on the Maturity Date of this Note, will be in the amount of U.S. \$35,000.00. My annual payment on the Maturity Date will be a Balloon Payment of U.S. \$633,767.00.

(C) Additional Payments

Any Additional Payments I make under Section 3 (D) and Prepayments I make under Section 4 will be used to reduce my Annual Payments required under Section 3 (B) on a "last-first" basis. That is, they will be applied, first to reduce my last of final 2010 annual payment. When this payments has been satisfied, they will then be applied to reduce my 2009 annual payments and so on - working toward the current date.

(D) Payments required to release lots for sale

In order to release a lot for sale, a principal payment will be required. The payment will be used on lot size measured as a fraction of an acre multiplied by \$15,000.00. Such principal payments will be in addition to the annual payment of \$35,000.00. However, such payments will be used to reduce the annual payments required above and following the sequence of last first as laid out in Section 3(C) above.

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." When I make a prepayment, I will tell the Note Holder in writing that I am doing so. I may make a full prepayment or partial prepayments without paying any prepayment charge. The note holder will use all of my prepayments to reduce the amount of principal

that I owe under this Note, using the "last - first" schedule explained in Section 3(C).

5. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Default

If I do not pay the full amount of each payment on the date it is due, I will be in default.

(B) Notice of Default

If I am in default, the Note Holder (Eighty Acres) may send the Escrow Company (Northern Title Company) a written notice, the Escrow Company in turn will notify me with a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is delivered or mailed to Northern Title Company.

(C) No Waiver By Note Holder

Should I, at some time be in default, and should the note holder not require me to pay immediately as described above, the Note Holder (Eighty Acres) will still have the right to do so if I am in default at some other time.

(D) Payment of Note Holder's Costs and Expenses

If the Note Holder (Eighty Acres) has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

6. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Escrow Company (Northern Title Company) a notice of my different address. Any notice that must be given to the Escrow Company (Northern Title Company) under this Note will be given by mailing it by first class mail to the Escrow Company (Northern Title Company) at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

7. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Escrow Company (Northern Title Company) may enforce the note holders rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

8. WAIVERS

I and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

9. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows: Transfer of

the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument. If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

Southern Hills Development Co., LLC

DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

THE BANK OF COMMERCE, an)
Idaho banking corporation,)
Plaintiff,)
vs.) Case No.
JEFFERSON ENTERPRISES, LLC,) CV 08-4231 OC
an Idaho limited liability)
company, DUSTIN MORRISON)
and SONYA KIDD aka SONYA)
MORRISON, THE CITY OF)

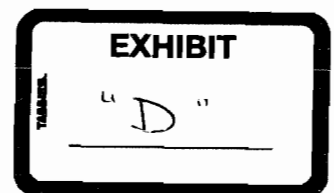
(Caption continued.)

ORAL DEPOSITION OF DUSTIN REED MORRISON

Taken on November 4, 2011

REPORTED BY:

PAUL D. BUCHANAN, RPR, RMR,
CSR No. 7, and Notary Public



I N D E X

Examination By: Page

Mr. Tucker 5

No Exhibits Marked

1 Pocatello, an Idaho)
2 municipality,)
3 Defendants.)
4)
5 DUSTIN MORRISON and SONYA KIDD)
6 aka SONYA MORRISON, and)
7 JEFFERSON ENTERPRISES, LLC,)
8 an Idaho limited liability)
9 company,)
10 Counterclaimants,)
11 vs.)
12 THE BANK OF COMMERCE, an Idaho)
13 banking corporation,)
14 Counterdefendant.)
15)
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

For the Plaintiff:

BRIAN T. TUCKER
Nelson Hall Parry Tucker
Attorneys at Law
P. O. Box 51630
Idaho Falls, Idaho

For the Defendants Jefferson Enterprises, LLC,:

A. BRUCE LARSON
ABLE Law, PC
Attorney at Law
155 South Second
Pocatello, Idaho

Also Present:

Michael Morrison

BE IT REMEMBERED that on November 4, 2011, at
the hour of 12:35 p.m. the deposition of DUSTIN REED
MORRISON, produced as a witness at the instance of the
plaintiff in the above-entitled action now pending in
the above-named court, was taken before Paul D.
Buchanan, CSR #7, and notary public, State of Idaho, in
the law offices of ABLE Law PC, 155 South Second Avenue,
Pocatello, Bannock County, Idaho.

WHEREUPON, the following proceedings were had:

DUSTIN REED MORRISON,
called at the instance of the plaintiff, having been
first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. TUCKER:

Q. Would you state your name for the record?

A. Dustin Reed Morrison.

Q. Mr. Morrison, have you had your deposition
taken before?

A. I have.

Q. How many times?

A. Twice.

Q. Which cases were those involved in?

A. All in the same case, a litigation against

1 Shawn Bridger and Re/Max, Country Real Estate.

2 Q. So as we take the deposition, you have been
3 present while we have had the other depositions the last
4 couple of days.

5 A. Yes.

6 Q. I will reiterate some of the advice given by
7 your counsel as far as trying to answer audibly when I
8 ask questions, try to, instead of nodding your head,
9 answer audibly. You understand that?

10 A. Sure.

11 Q. Also as I ask questions, I will try to ask
12 them intelligently but if for some reason you don't
13 understand what I am asking, feel free to tell me you
14 don't understand and I will try to rephrase.

15 A. Very good.

16 Q. And if you answer the question, I will assume
17 you understood it and we will proceed. Does that make
18 sense?

19 A. Yes.

20 Q. Are you under any medication or anything today
21 that would affect your ability to testify?

22 A. No.

23 Q. Do you have a clear mind, you are not --

24 A. I wouldn't go that far, but as clear as it
25 gets.

1 Q. Why don't you tell me a little bit about your
2 education?

3 A. It's reasonably limited. I graduated from
4 Pocatello High School and went to Idaho State
5 University for a little while while working. I think I
6 got 88 credits or something like that, changed my major
7 three times. A lot of training, a lot of construction
8 related training.

9 Q. Was that college related or is that
10 on-the-job?

11 A. A lot of certifications, ANSI certifications
12 for welding and welding inspection and hazmat training,
13 blueprint take-off, scheduling courses, bookkeeping and
14 accounting courses, MSDS training, lockout/tagout
15 training, certifications; just a lot of construction
16 related certifications to enable us to qualify to do
17 jobs.

18 Q. What was your major when you were in college?

19 A. Construction management and then ISU had a
20 program called engineering management, they don't have
21 it anymore, but it was related to construction
22 management.

23 Q. What year was it that you graduated from high
24 school?

25 A. 1990.

1 Q. And then your college courses were shortly
2 after that?

3 A. Yeah, but probably over three years, four
4 years maybe.

5 Q. And you didn't actually graduate with a
6 bachelor's degree.

7 A. No.

8 Q. How about your work experience after high
9 school, what was your work experience?

10 A. I built houses for about four or five years
11 with my grandfather in Lava; in the summer I would work
12 at Mark III as an electrical apprentice in Soda Springs.
13 Worked for Mullen Crane. Worked various jobs welding.
14 Worked for the Union Pacific for a little while welding.
15 A lot of construction, pipeline jobs, a lot of
16 industrial, commercial jobs when I was a kid, followed
17 the money, you know, just followed shut-downs and stuff
18 like that.

19 Q. Eventually you started doing your own
20 construction and building; is that right?

21 A. Yes.

22 Q. When was that?

23 A. '97 is when I decided now or never, so I
24 started in 1998, just a dba. And then I changed the
25 name to American Dream Home Builders in 2000.

1 Q. So these various welding, Union Pacific,
2 different jobs, those would have all been from the time
3 you got out of high school in 1990 until approximately
4 1998?

5 A. Yes.

6 Q. And then in 1998 you began in earnest to be
7 your own developer.

8 A. Yes -- well, builder first and then
9 development followed.

10 Q. When did you get into development?

11 A. 2003.

12 Q. And what was your experience with development,
13 what kind of developments did you do?

14 A. Well, up to 2003 none. The evolution was
15 really about the frustration with building. So we
16 started buying lots and building houses, and then we
17 would buy groups of lots and build houses. And the idea
18 was to kind of control your comparables, the houses that
19 were next to you. And then that evolved into -- so
20 during that I was around the development part of it. So
21 in 2003 I decided that I had the capital and the
22 knowledge and the contacts to try it.

23 Q. So what does that typically involve as far as
24 your understanding as far as development, what's the
25 difference between building and developing?

1 A. Development is a lot easier. It takes a lot
2 more money. So what's involved in development?
3 Q. What's the difference between the two.
4 A. Well, they are not really related --
5 development, in my case, you know, commercial and
6 residential development, it really starts out with
7 finding a piece of land that you are intrigued with and
8 it fits what you want to do. And then negotiating a
9 purchase at a price you decide you can cash flow after
10 all the expenses are deducted.

11 So a lot of that has to do with density, how
12 many lots can I get approved per acre, that will decide
13 per-acre value. The higher the density, more value.
14 And then you want to be in the path of progress, I
15 guess, if you will, you want to be where the growth
16 seems to be heading. So for me that's a big one. There
17 is a whole another market for just the opposite,
18 discount purchases and low income housing.

19 So the first thing is to find a piece of land.
20 The second thing is to design it, and then get some kind
21 of preliminary approval, and then attach estimates as
22 close as you can get to accurate bids, you know. I used
23 to try to attach bids first even and then take it to the
24 bank with what I call a pro forma, but a proposal on how
25 it will perform and what assumptions you are using.

1 And then they take it and appraise it and the
2 appraisal will either reconcile or show discrepancies
3 between your estimates and what theirs are. And if
4 those are reconciled, then a bank will make a
5 determination and they have their criteria on
6 determining that.

7 Q. You said you got into development because of
8 frustration. What --

9 A. Well, frustration with building houses that
10 maybe were worth \$250,000 to have another builder come
11 in next to you and build a \$180,000 house. And it was
12 great benefit to them but it would also for the same
13 reasons pull ours done. So it went from that to buying
14 full retail price, six or seven lots, to realizing that
15 we could probably develop six or seven lots and create a
16 little bit of a competitive advantage over just
17 purchasing lots.

18 Q. I want to walk through some of the different
19 entities that you either have or you are involved with
20 now or used to be involved with.

21 A. Sure.

22 Q. Jefferson Enterprises, LLC, you are familiar
23 with that entity?

24 A. Yes.

25 Q. And who are the owners or members of that

1 entity?

2 A. Myself.

3 Q. Have there been other members or owners?

4 A. Yes, Sonya Morrison has been a member.

5 Q. Sonya is your former wife?

6 A. Yes.

7 Q. When was it she was no longer a member of
8 Jefferson Enterprises?

9 A. September.

10 Q. Of this year?

11 A. Yes.

12 Q. And is that part of your divorce?

13 A. Yes.

14 Q. As part of that she, what, transferred her
15 interest in Jefferson Enterprises to you?

16 A. Yes.

17 Q. Have there been any other owners or members of
18 that entity?

19 A. No.

20 Q. Currently who are the managers of that entity?

21 A. Myself.

22 Q. And prior to September of 2011 was Sonya also
23 a manager?

24 A. I don't think she was a managing member, I
25 think she was just a member.

1 Q. Is there anyone else who had authority for
2 that entity other than yourself?

3 A. No.

4 Q. Did that entity, Jefferson Enterprises, have
5 employees?

6 A. No.

7 Q. What type of business did Jefferson
8 Enterprises, LLC, do?

9 A. It really was just a holding company,
10 acquisition and holding, bare land.

11 Q. And that's the entity that acquired the
12 property that's the subject of this litigation --

13 A. Yes.

14 Q. -- correct?

15 A. Yes.

16 Q. I know you know where I am going, but let me
17 try to finish before you answer, that will help Paul
18 with his transcription.

19 A. Very good.

20 Q. Other than this property -- what do you call
21 it, do you call this the Southern Hills property?

22 A. Yes.

23 Q. Other than the Southern Hills property, did
24 Jefferson Enterprises ever acquire any other property?

25 A. Yes.

1 Q. What property did it acquire?

2 A. A parcel I call Stone Creek Estates in Idaho
3 Falls off of 49th Street.

4 Q. Is that a piece of property that was developed
5 by Jefferson Enterprises?

6 A. Yes.

7 Q. And when was that development completed?

8 A. It's not; it's ongoing.

9 Q. So does Jefferson Enterprises still own some
10 of the Stone Creek property?

11 A. Yes.

12 Q. How much acreage, if you know, in the Stone
13 Creek development does Jefferson Enterprises own?

14 A. I am not certain. It owns 12 developed lots
15 and I am just going to guess ten acres.

16 Q. When you say twelve developed lots, what does
17 that mean? That have improvements on them?

18 A. Yes.

19 Q. So they are lots that you could build on now.

20 A. Yes.

21 Q. And then the ten acres, is that also within
22 the Stone Creek subdivision?

23 A. Yes.

24 Q. Any other property that's owned by Jefferson
25 Enterprises?

1 A. Yes.

2 Q. Sonya used to be a member of that, like
3 Jefferson Enterprises?

4 A. Yes.

5 Q. Let me go back to the Bank of Idaho loan. Are
6 you current on your obligation to Bank of Idaho in the
7 Jefferson Enterprises loan?

8 A. No.

9 Q. Is that development, are those lots in
10 foreclosure?

11 A. No.

12 Q. Are you negotiating with them on repayment?

13 A. I think we have resolved it, so I don't know
14 if the answer is right, that I am not current. We are
15 not under the same obligations as the initial financing
16 was set up. So we have kind of come to some resolution
17 that we are going to do it different.

18 Q. So is it fair to say you had a loan with Bank
19 of Idaho with certain terms and at some point those
20 terms were modified to allow you some additional time?

21 A. Yes, perfect.

22 Q. As far as you know, you are within those
23 different time frames and you are just moving on trying
24 to finish that?

25 A. Yes.

1 A. No.

2 Q. Any other assets of Jefferson Enterprises?

3 A. No.

4 Q. Other than this obligation of owing to the
5 Bank of Commerce that we are going to discuss, any other
6 liabilities that Jefferson Enterprises has?

7 A. Yes.

8 Q. Who does it owe money to?

9 A. Bank of Idaho.

10 Q. How much does it owe Bank of Idaho?

11 A. I'm not certain but between six and \$700,000.

12 Q. Is that secured by these lots that we talked
13 about?

14 A. Yes.

15 Q. And the acreage?

16 A. Yes.

17 Q. So are you building any homes on those lots at
18 this time?

19 A. No.

20 Q. How about American Dream Home Builders, LLC,
1 are you familiar with that entity?

22 A. Yes.

23 Q. Is that entity still in existence?

24 A. Yes, I changed the name to ADHB, LLC.

25 Q. The same owners and members?

1 Q. This ADHB, LLC, any other managers other than
2 the same ones we went through with Jefferson
3 Enterprises?

4 A. No.

5 Q. How about employees, does it have employees?

6 A. It did; it doesn't now.

7 Q. What kind of business was ADHB or American
8 Dream Home Builders, what type of business did it engage
9 in?

10 A. It's still doing business as American Dream
11 Home Builders, so if you want to refer to it as that, I
12 would be fine with that. It's a construction company,
13 builds houses and small commercial buildings.

14 Q. And it's still operating today?

15 A. Yes.

16 Q. And even though you have changed the name,
17 it's essentially the same entity.

18 A. Yes.

19 Q. What was the reason for the name change?

20 A. Just personal reasons and I'll probably change
21 it back, I'm not certain yet.

22 Q. And does it have any assets?

23 A. Yes.

24 Q. It being American Dream Home Builders.

25 A. Yes.

1 Q. What assets does it have?

2 A. It has some tools -- I am not real sure on
3 what exactly they are, but it has some tools and
4 equipment.

5 Q. So is this the entity that actually goes in
6 and builds homes?

7 A. Yes.

8 Q. So it wouldn't necessarily carry real
9 property, that's not what its purpose is for.

10 A. That's not what its purpose is for, but it
11 ends up that it actually owns an interest in Vinyard
12 Court subdivision. I had that subdivision paid off and
13 took a loan out on it while I was in Hong Kong. And the
14 Bank of Idaho did the loan under American Dream Home
15 Builders and I ended up, just because I was out of town,
16 signing it. Technically they owned Vinyard Court, but
17 its purpose was not to own that. It was owned prior by
18 Jefferson Enterprises and then it got paid off.

19 Q. So has American Dream Home Builders, has it
20 been in operation essentially since 2003?

21 A. Since 2000. I believe we made it a limited
22 liability company in 2001.

23 Q. And has it operated continuously throughout
24 that period of time?

25 A. Yes.

1 Q. What about American Dream Construction, Inc.?

2 A. It was an excavation and development company.

3 Q. When was it that?

4 A. 2003.

5 Q. And then I assume by your answer that it
6 changed at some point?

7 A. Yes. In 2008 we liquidated the equipment. We
8 couldn't keep up. We weren't doing any consequential
9 business that justified the debt service. So we
10 liquidated the equipment and satisfied the debt in full
11 and put the company to sleep for a while.

12 Q. So you say it was an excavation and
13 development company?

14 A. Yes.

15 Q. Doing developments like Jefferson Enterprises
16 was?

17 A. Well, Jefferson Enterprises didn't actually
18 develop, they contracted the development of. So they
19 were kind of the end user client, if you will. So they
20 would contract with maybe Johnson Excavation or American
21 Dream Construction, Inc., to come in there and do
22 improvements to that bare land.

23 So the idea was that you had a land holding
24 company that would contract with the development
25 company, would come in and improve bare land, change use

1 to finished lots, and then American Dream Home Builders
2 would come in and put the final product on that lot.

3 Q. You mentioned Johnson. Is that another one
4 of your --

5 A. No, that's just an example, because Jefferson
6 had Johnson do some development, improvements.

7 Q. And that was unrelated to you, that entity.

8 A. Yes, unrelated.

9 Q. Are the owners and shareholders the same for
10 American Dream Construction as the other two entities?

11 A. Yes.

12 Q. And, again, the controlling interest was by
13 you and Sonya until recently with your divorce.

14 A. Yes.

15 Q. How about Southern Hills Development, LLC?

16 A. I don't even think that's a company anymore.
17 I think it's just an asset of Jefferson Enterprises that
18 we have just not modified, because all the taxes are
19 still listed there, so I think we just assigned all the
20 interest of Southern Hills Development to Jefferson
21 Enterprises.

22 Q. So that entity, as far as you are concerned,
23 doesn't operate anymore.

24 A. That's right.

25 Q. And whatever it had is now Jefferson

1 Enterprises.

2 A. That's right.

3 Q. And the ownership of Southern Hills
4 Development Company, LLC, was the same as what we have
5 talked about with the other entities?

6 A. Yes, it's now just Jefferson Enterprises. But
7 I don't even think it exists anymore, I don't even think
8 I have renewed it, I think it's expired, I think it's
9 gone.

10 Q. What was the purpose of that entity, do you
11 know?

12 A. Probably the purpose of that entity was to
13 acquire options and cause the change of use and
14 commitment of entitlements, et cetera, by or from the
15 city. There was a lot of money spent so just felt like
16 it was a good idea to keep it separate.

17 Q. 80 Acres, Inc., that's not your entity, is it?

18 A. No.

19 Q. Who are the owners or shareholders of 80
20 Acres, Inc.?

21 A. I don't know. Actually Lyman was one of them,
22 who was their representative.

23 Q. And how was it that you came in contact with
24 80 Acres, Inc.?

25 A. I just liked the lot, liked the parcel of

1 land, looked at ownership, contacted that group. I
2 believe they were out of Moscow. Made them an offer,
3 negotiated, and purchased the land.

4 Q. But you don't know who the shareholders or
5 officers of that company are?

6 A. I don't. I only dealt with one.

7 Q. That was the Ashley Lyman?

8 A. Right.

9 Q. Now, the 80 Acres, Inc., property that we have
10 talked about over the last couple of days, does it
11 actually comprise 80 Acres?

12 A. No.

13 Q. How many acres does it actually comprise?

14 A. 67.

15 Q. When we refer to the 80 Acres, Inc., property
16 you know what we are talking about.

17 A. Yes.

18 Q. You talked about the Jefferson Enterprises
19 acquiring the Southern Hills Development Company and I
20 think that happened in 2005. What was the rationale
21 there? What was going on, why did you consolidate
22 those.

23 A. It was always intended, I think, to be an
24 asset or, you know, in the same context as the other
25 developments held by Jefferson Enterprises.

1 Q. But was it specifically for the Southern Hills
2 Development?

3 A. Initially to get it approved and an entitled
4 annexed project. It was its own animal. Then once it
5 was approved and entitled and annexed, then it just
6 became part of Jefferson Enterprises. But it took a
7 little while, because I was busy and it wasn't really a
8 priority, and then all of a sudden ownership literally
9 closed into Southern Hills Development, became the
10 owner, and then tax filings, you know, the parcel
11 numbers were recorded and tax filings were sent out. So
12 rather than go in there and change all of that stuff,
13 just one day my accountant and I decided to just make
14 Southern Hills Development an asset of Jefferson
15 Enterprises and it's one less tax return and it's truly
16 where it belonged anyway.

17 Q. Did Jefferson Enterprises pay Southern Hills
18 Development something for that property?

19 A. No. I believe that Jefferson Enterprises was
20 actually listed as the owner of Southern Hills
21 Development when Southern Hills Development was set up.
22 I'm not positive of that, but I believe that. And I
23 believe my signature on Southern Hills Development,
24 LLC's, filing was as a representative of Jefferson
25 Enterprises.

1 Q. So at some point for tax reasons or talking
2 with your accountant, you just decided to kind of
3 collapse those two or merge them together so they were
4 just the one entity.

5 A. Yeah, make how it was really thought of
6 anyway, you know, Southern Hills as an asset held by
7 Jefferson Enterprises.

8 Q. We have talked a little bit about what's
9 called commonly the Wood property. What is your
10 understanding of what the Wood property is?

11 A. I think it's -- I don't know what the exact
12 acreage is but I think it's somewhere around 325 or 330
13 acres. But it is contiguous with the 80 Acres, Inc.,
14 piece of 67 acres we were just speaking of. It combined
15 with another entity it had called Black Cliffs
16 Development, which was a preplatted, preapproved
17 subdivision that had some presold interest in it became,
18 in my kind of global idea, Southern Hills.

19 Q. So Southern Hills, when we talk Southern
20 Hills, that's a global word for the Wood property, the
21 80 Acres property, and this Black Cliffs property?

22 A. Yes, and the Black Cliffs is really part of
23 the Wood property. So there are two distinct pieces,
24 Woods and 80 Acres, Inc., in my head.

25 Q. How was it that you came about this idea to

1 develop that property?

2 A. I don't know. It was really an evolution that
3 started with my interest of that with the high school
4 location. The next step with that interest was talk of
5 a Cheyenne Street overpass. The third interest in that
6 was discussing it with Bill Isley, an old business
7 associate, and he kind of maybe reinforced support for
8 it. And then the fourth step of that evolution was that
9 we kind of aligned our ships, essentially decided to
10 partner up to go develop this beast.

11 And then the fifth was that we decided not to
12 partner up --

13 Q. This is you and Bill?

14 A. Yes. And then the sixth was that I went out
15 on my own and designed it with an engineering firm,
16 Rocky Mountain Engineering and Survey, went to the
17 different owners and negotiated sales, put it together
18 in the same format that I went through prior, which
19 eventually led to a market feasibility analysis and
20 appraisal and finally term financing.

21 Q. I think you referred to it as this beast.
22 What did you mean by this beast?

23 A. It's the biggest subdivision, it's the biggest
24 master plan subdivision I believe at the time in Idaho,
25 still by far in Southeast Idaho, in this market, in this

1 world. I mean nothing original nationally but extremely
2 original for the community, for the area, for the state.

3 Q. So it was kind of a cutting edge thing here --

4 A. For us, yes.

5 Q. Now, this Bill Isley, you say he was partners
6 and then he wasn't partners. He is not involved with
7 the project?

8 A. No.

9 Q. What was his involvement as your partner
10 originally?

11 A. Oh, he was my co-day dreamer, I guess. Just
12 kind of developed the idea, if you will. But then when
13 it got to the point of actually doing something, I think
14 he just decided that it probably wasn't something that
15 he wanted to focus the balance of his life on.

16 Q. Did you leave on good terms with Bill?

17 A. Okay. As it relates to Southern Hills,
18 perfect terms. We had some other issues with some money
19 that he owed me that he didn't want to pay, and I
20 finally just walked away from it.

21 Q. So you never did get the money issue resolved?

22 A. Unrelated to Southern Hills, yes. We managed
23 some construction projects for him that we didn't get
24 paid on.

25 Q. When was it that Bill Isley got out of the

1 A. No, I'm not a hundred percent sure but I
2 believe that I negotiated extremely favorable terms and
3 just performed in early '05, maybe April. And got a
4 deal done. They financed it. I gave them I think a
5 quarter million dollars down or something like that.

6 I might be really getting out of line here by
7 saying it, because I'm not a hundred percent sure what
8 it was. But again quite a bit of money down and then
9 negotiated really good terms for the balance of five
10 years with a balloon payment due, I want to say 2011 or
11 12 or something like that. And it was zero interest
12 financing, too. They started out as wanting -- or
13 basing it off a premise of 4.5 percent interest but what
14 they really did was just capitalize that anticipated
15 interest into an overall purchase price.

16 Q. So when you say, when we say that there wasn't
17 interest, I mean there was interest on what the amount
18 was, it was just built into it, you didn't have to pay
19 that annually?

20 A. Yes, it wasn't interest. The price was borne
21 of a principal and interest relationship that was
22 converted into or capitalized into a principal only
23 loan.

24 Q. So if you had gone in and bought the property
25 outright at that time, you would have paid less --

1 Southern Hills project as a partner?

2 A. I'd say May of 2005 maybe.

3 Q. At that point was the Southern Hills project
4 approved, in other words --

5 A. No --

6 Q. -- gotten its entitlements --

7 A. Hadn't even been submitted yet.

8 Q. At some point you acquired an option on the
9 Southern Hills property; is that correct?

10 A. The Wood property. Is that what you are
11 asking me?

12 Q. Yes.

13 A. Yes.

14 Q. When was it that you obtained that option?

15 A. I don't know, I don't remember. Sometime
16 around that same time. Both options were negotiated
17 early, early '05, I want to say like February of '05.

18 Q. When you say both options, which options are
19 you talking about?

20 A. The one for 80 Acres, Inc., and then the one
21 for the Wood property.

22 Q. So both of those started out as options.

23 A. Yes.

24 Q. On the 80 Acres, Inc., property, did you
25 extend that option?

1 A. No, that was their point, is they didn't value
2 cash over time, they didn't see there being any value to
3 having the cash now, they didn't want the cash now, they
4 didn't want it paid off now, they wanted that money to
5 earn money.

6 Q. So they would rather have the loan --

7 A. Yes.

8 Q. -- than have the cash.

9 A. Yes. So there was not one dollar incentive to
10 pay that off one day early.

11 Q. So was that what they told you when you
12 acquired the property?

13 A. Yes. In fact I think almost verbatim they
14 said the price will be the same if you pay us today or
15 if you pay us over time.

16 Q. What was the interest rate that they built
17 into it?

18 A. I don't remember; I think it was like four and
19 a quarter or something like that. And I am not a
20 hundred percent sure how they did it, if it was
21 amortized or if it was just a straight flat this
22 percentage annually of the balance. I can't remember.
23 It really wasn't of that much interest to me because the
24 purchase price was just fantastic to begin with.

25 Q. Now, the Wood property, you didn't close on

1 that property until May of 2006; correct?

2 A. That's right.

3 Q. Or you had an option on it much earlier; is
4 that right?

5 A. Yes, that option could have been late '04. It
6 could have been October of 2004 when it was initially
7 began negotiated. Part of me thinks that there was a
8 six-month extension and then a one-year extension, so
9 that's where I am going back 18 months from the closing
10 date to come up with that date.

11 Q. So that option you extended a couple different
12 times?

13 A. Twice, yes. Maybe it was three six-month
14 extensions, I am not sure.

15 Q. What did you pay for the option on that
16 property, on the Wood property?

17 A. I am just going to make this up, but it's
18 something in the world of a hundred thousand dollars up
19 front and then I believe each extension I paid something
20 like \$20,000 maybe.

21 Q. And so you had --

22 A. Maybe it was more, maybe it was 10 percent of
23 the purchase price I paid for the option. But not as a
24 fee, it went towards the principal upon performance.

25 Q. But on closing, when you closed in May of

1 2006, you had a credit of \$140,000 as a down payment --

2 A. Is that right?

3 Q. Assuming that's what the settlement statement
4 showed, that would be what you paid for the option --

5 A. Yes, the option and extensions.

6 Q. Whatever that amount was on the settlement
7 sheet that they gave you as a credit for the down
8 payment, that's what you had paid?

9 A. That's a fair assumption.

10 Q. Who owned the Wood property?

11 A. Mike Wood.

12 Q. Is he local?

13 A. Yes.

14 Q. Local meaning he lives in Pocatello?

15 A. I don't know where he is at right now, but he
16 was an older gentleman who was a part owner of Bannock
17 Paving that ended up owning that as part of his
18 severance, I guess.

19 Q. If you recall, what were the provisions of
20 your option on that property?

21 A. I don't think there were any. A purchase
22 price and a closing date. I think there was a due
23 diligence period for the first six months that it passed
24 that we were comfortable with. And some title
25 contingencies, you know, providing that you could offer

1 unencumbered title.

2 Q. Now, you extended that option a couple of
3 different times:

4 A. Yes.

5 Q. Was that a problem getting that extended?

6 A. The last six months was. There was starting
7 to be quite a bit of interest because we had obviously
8 already taken this project public and he gave me every
9 bit of assurance that there wouldn't be another one.

10 And he reassured me of that when I asked him for another
11 one prior to the final closing. He said, no, there will
12 be no more extensions, we have got tentative offers on
13 this piece of land for more than I am selling it to you
14 for. If you don't close, I am moving forward.

15 Q. You say the last time, whenever that was that
16 you got your last extension until May -- when was the
17 last extension?

18 A. I believe that it would have been October of
19 '05, right in the middle of the approval process with
20 the city. We started that whole public process I
21 believe in August of '05, so it was televised. So in
22 October I think we got a six-month extension.

23 Q. And that would taken you until -- what was
24 your drop dead date as far as you were concerned?

25 A. Well, it was April, the end of April, May,

1 whenever it was, six months, you know.

2 Q. But the closing took place of the Wood
3 property, you closed on the Wood property, according to
4 the settlement documents, May 10 of 2006.

5 A. Yes, the drop dead date.

6 Q. That was your closing --

7 A. That was the date.

8 Q. Prior to that, in October of 2005 or whenever
9 it was that you obtained that next extension, that last
10 extension, you are saying at that point Mr. Wood told
11 you there would not be any other extensions?

12 A. Yes.

13 Q. So you knew then that this was your last
14 chance.

15 A. Yes.

16 Q. I think you said however in May of 2006 prior
17 to closing that you actually approached him about
18 another extension?

19 A. Yes.

20 Q. And at that time he told you no.

21 A. Yes.

22 Q. And that was because he had other people that
23 were willing to buy it?

24 A. Yes.

25 Q. What was the down side to you if you didn't

1 exercise your option?

2 A. Lost the project and all that had been
3 invested in the project, the equity we had gained in the
4 project, which was substantial. We had taken an
5 absolutely useless piece of land, to the definition of
6 useless, it had never been used for anything, hadn't
7 been able to be approved for anything, and turned it
8 into a multi family, multi use, mixed use
9 commercial-residential, fantastic development, and got
10 approved and entitled.

11 Q. So you had dumped you say a lot of your money
12 into it?

13 A. Yes. I want to say close to a million dollars
14 maybe. If you take all of the down payments and the
15 options, purchases and all of that, you know, money plus
16 the money that -- yeah, a lot of money, and a lot more
17 time than money, too.

18 Q. And you spent all of that money knowing that
19 you didn't have at the time money to purchase the
20 property?

21 A. No. We didn't have money to purchase because
22 we hadn't asked yet, because we didn't know what its
23 value would be until we were done with the process. So
24 we knew that there would be money available, we didn't
25 know how much money there would be available.

1 Q. So you took a risk and spent a million
2 dollars --

3 A. Don't hold me to that, it might have been
4 eight or seven, but a substantial amount of money.

5 Q. You spent a substantial amount of money in
6 getting entitlements, doing all of those things on the
7 property --

8 A. Engineering, all of that, yes.

9 Q. -- with the hope and belief that you would
10 eventually be able to get financing for it.

11 A. Yes.

12 Q. You knew that was a risk going into it.

13 A. No, and I may have been wrong. The risk would
14 have been how much money we could get for it. And keep
15 in mind when we started spending money, we didn't know
16 what it would cost to complete the process. The risk
17 was that the value would increase parallel to the
18 expenses or at least outpace the expenses.

19 We always knew we could get financing on
20 something if approved, and we had assurances from the
21 city that we could get something approved. But it could
22 have been \$1.5 million that we could have borrowed on a
23 \$2.2 million project, which would have meant that we
24 would have come into the game with \$700,000.

25 Q. Those were all unknowns going into it.

1 A. Yes.

2 Q. And that's kind of what development is all
3 about, you get an idea, you see a project, you dump some
4 money in, and you hope it turns out.

5 A. Yes.

6 Q. There has been a lot of talk about these
7 exceptionally favorable terms on the 80 Acres, Inc.,
8 property. In your mind what are those exceptionally
9 favorable terms?

10 A. Initially the purchase price was fantastic.
11 The Wood property depended on the 80 Acres, Inc.,
12 property. Annexation depended on the 80 Acres, Inc.,
13 property because of the contiguous stipulation,
14 requirement for annexation. It's the flattest piece of
15 property out there, so its density has the greatest --
16 or I mean it has the greatest potential for higher
17 density. I think I bought it for \$10,000 an acre or
18 under 11, I think. The interest rate was extremely low
19 on the balance. The payment terms were fantastic, as it
20 related to my agenda, my development agenda and so
21 forth. It wasn't a big requirement of debt service for
22 four or five years.

23 Like I said, it was no interest, it was no
24 interest, that was the biggest thing. I mean the
25 purchase price may have been adjusted a little bit

1 higher for that stipulation of no interest, but it
2 wasn't an option either.

3 Q. Because they didn't want the cash.

4 A. Right. They didn't want all the cash.

5 Q. Or the problem.

6 A. Right. So it couldn't have been better, in my
7 opinion, I couldn't have asked for better terms. The
8 purchase price was fantastic, it was less than 50
9 percent of what I had paid for reasonably comparable
10 land in the past in the same market. And it was a
11 critically important piece of property, they could have
12 probably asked for twice.

13 Q. When you say it was critically, it was
14 critically important to this project, the Southern Hills
15 project.

16 A. Yes, it could have lived on its own without
17 the Wood property.

18 Q. Could the Wood property --

19 A. No.

20 Q. Let me finish, I know you know where I am going
21 with this.

22 Could the Wood property survive on its own
23 without the 80 Acres property?

24 A. No, it could not. Not as I had it designed.

25 Q. So in your mind, if you look at -- I don't

1 want to spend time looking through the appraisal, you
2 know kind of what the appraisers came up with on the
3 value of the Wood property, value of the 80 Acres
4 property. In your mind the 80 Acres property was
5 probably worth more than what the appraisal came back
6 at?

7 A. No. But if you look at the acreage versus the
8 appraised values and you compare those, the appraisal is
9 even indicating that the 67 acres are worth more than
10 the other 325 acres per acre.

11 Q. So the 80 Acres, Inc., property was owner
12 financed.

13 A. Yes.

14 Q. Or I should say probably seller financed.
15 They were going to finance it for you.

16 A. Yes.

17 Q. Now, D.L. Evans at some point obtained a
18 position in that property; is that correct?

19 A. Yes.

20 Q. And D.L. Evans, what was the purpose of that
21 loan?

22 A. Much like the purpose of the Bank of Commerce
23 loan, a bridge loan. Let us set up terms on this 80
24 Acres, Inc., piece, move forward with this global
25 development agenda, and then kind of wrap it together,

1 looking for financing for the entire project?

2 A. I don't know, maybe. We were looking for
3 financing starting in December of '05, I think.

4 Q. When you say you were looking for financing,
5 you were looking for financing for the entire Southern
6 Hills project, to acquire the Wood property?

7 A. Yes, exactly as submitted. We wanted to --
8 whoever it was, we always -- and, see, we never
9 submitted to D.L. Evans for any amount less than the
10 \$2.8 million, it was always that number.

11 And the reason why was we wanted to get our
12 out-of-pocket expenses reimbursed and offset that by
13 this new equity position that those funds actually
14 generated, to put back into our working capital so that
15 there wasn't deficient due to this project that at that
16 point hadn't generated anything besides just equity.

17 Q. Tell me again when you started looking for
18 that financing?

19 A. Probably December of '05 maybe.

20 Q. The Wood property, was it located within the
21 City of Pocatello at the time?

22 A. Not at the time, no.

23 Q. Was it eventually annexed into the city?

24 A. Yes.

25 Q. When did that take place?

1 offer the balance of the equity in the 80 Acres, Inc.,
2 piece to the term note that pays for the front end of
3 the 80 Acres, Inc., financing. So you buy a piece of
4 land with no improvements and no annexation or no
5 entitlements for whatever the price was, I can't
6 remember, half of its appraised value. So you have got
7 a 50 percent equity position in there.

8 And then you go put the whole thing together
9 as a package, you maintain the terms of this loan, you
10 pay off the front end \$250,000 payment and offer the
11 balance of equity, a second position or whatever you
12 wanted to look at it, whatever the rest of it is, for
13 consideration of that \$250,000.

14 Q. Do you remember how much the D.L. Evans loan
15 was for?

16 A. I don't; it was less than 250.

17 Q. What did you use those funds for?

18 A. To pay to Ashley Lyman.

19 Q. So that's where you got your down payment to
20 acquire that property?

21 A. Yes.

22 Q. Do you know when the D.L. Evans loan became
23 due?

24 A. I don't.

25 Q. Was it due in April of 2006 when you were

1 A. I don't remember. Publicly it happened

2 January of 2006 but I don't know if it was -- so it
3 became part of the city, started getting taxed as a city
4 entity January of 2006, but I don't think the annexation
5 agreement was signed until late of '07.

6 Q. Late of '07, so a year after?

7 A. Yes.

8 Q. What was the Wood property zoned or did it
9 have multiple use zoning?

10 A. Multiple use.

11 Q. What was your agreement, what were some of the
12 terms of the annexation with the city?

13 A. You guys should have a copy of that.

14 Q. Those are just as spelled out in the
15 annexation agreement?

16 A. Yes.

17 Q. Nothing that's not in the annexation agreement
18 that you understand?

19 A. I don't know that.

20 Q. I guess what I am asking, are there terms or
21 requirements that you have to perform and the city has
22 to perform that aren't included in the annexation
23 agreement?

24 A. I don't know.

25 Q. Is there a reason why they wouldn't be

1 included in the annexation agreement?

2 A. You know, it was difficult to get that
3 annexation agreement produced in the first place, it was
4 a nightmare. It was just a terrible process. And so
5 that would be the reason why there could be things that
6 I may be obligated to or they may be obligated to that
7 aren't spelled out in the annexation agreement.

8 Q. As you sit here today, is there anything that
9 you can think of that you know is not included in the
10 annexation agreement that either the city was required
11 to do or that you were required to do?

12 A. I don't know. I think there were some
13 deadlines that they didn't meet and that weren't
14 stipulated in the annexation agreement. But I haven't
15 reconciled that so I don't know. I sound like a
16 babbling idiot right now, I know, but I don't know.

17 Q. When you say deadline they didn't meet, you
18 are saying deadline that the city didn't meet?

19 A. Yes.

20 Q. Eventually was the master plan for the
21 Southern Hills Development approved by the city?

22 A. Yes.

23 Q. And when was that approved?

24 A. I think it was a city council meeting the
25 middle of January of 2006.

1 Q. So sometime early 2006 the project was
2 approved and obtained the entitlements?

3 A. January.

4 Q. Of 2006.

5 A. Yes.

6 Q. And the property, again, that was included in
7 that included the Wood property and the 80 Acres, Inc.,
8 property.

9 A. Yes.

10 Q. You talked about the expenses that either you
11 or your entities spent working on this Southern Hills
12 Development property, things like engineering,
13 surveying, all of those type of things. Are there
14 documents that detail what those are?

15 A. Yes.

16 Q. And are those documents that we have looked
17 at?

18 A. I doubt it.

19 Q. They are not included in, for example,
20 Deposition Exhibit No. 21 (indicating)?

21 A. Yes, this is probably a good accounting, but I
22 mean I think I have it even further broke down.

23 Q. We are looking at the first page of Deposition
24 Exhibit No. 21. Are the pages subsequent to that, are
25 those breakdowns of costs that you have incurred?

1 A. No.

2 Q. What are the other pages?

3 A. Estimates of costs and quantities,
4 quantitative take-offs with quantitative multipliers,
5 pricing, and then a cash flow with some assumptions of
6 absorption and interest and so forth. This is what I
7 call a pro forma, I don't even think that's a real word,
8 but --

9 Q. I think pro forma is a real word.

10 A. Is it?

11 Q. So as far as the actual engineering expenses
12 that were incurred, you are not sure what those are?

13 A. Sure, engineering costs paid through July 31,
14 2005 (indicating) for \$140,000. Rocky Mountain
15 Engineering & Survey to date, \$90,000.

16 Q. So you are looking at the first page of
17 Deposition Exhibit No. 21.

18 A. Yes. I am sure it's reasonably accurate. It
19 seems like I supplied the bank with a real breakdown,
20 though, of receipts.

21 Q. Here on Deposition Exhibit No. 21 it says Bill
22 and Brad for their expenses toward -- I am reading it
23 upside down -- is that --

24 A. Earnest money and engineering costs through
25 July 31.

1 Q. That's \$140,000. What's the Bill and Brad?

2 A. That's what I was telling you about prior when
3 we kind of decided to line ourselves up and partner up
4 on this and go fishing and exploring.

5 Q. Did Bill and Brad advance that \$140,000?

6 A. They spent that much as their portion of our
7 fishing trip.

8 Q. Who is Brad?

9 A. Bill's partner in their Tuscany Hills
10 development.

11 Q. So that's back to where you said they started
12 out kind of being partners with you and eventually they
13 were no longer partners with you.

14 A. Right.

15 Q. But while they were partners with you, they
16 spent \$140,000 of their money to go ahead on the
17 project.

18 A. Yes.

19 Q. And did they get that back?

20 A. Yes, I paid that to them, I have a check.

21 Q. When were they paid back?

22 A. I would guess sometime prior to July 31, 2005,
23 as those were costs paid through July 31, 2005.

24 Q. I think you said in December of 2005 you
25 started looking for financing to acquire the Wood

1 property.

2 A. Yes, and it may have been earlier than that.

3 Q. Who all did you approach to try to obtain
4 financing?

5 A. I went to D.L. Evans Bank and they showed
6 interest in the project. They agreed to go to step one
7 and forward the money on the 80 Acres, Inc., parcel,
8 knew the agenda. And then when I proposed the 2.8
9 million, they said that they didn't want to reimburse
10 anything, but expressed that they may be able to do a
11 2.2.

12 So my time line is a little bit different than
13 everybody else's who have been deposed, so I am just
14 going to say mine and leave a contingency out there that
15 I may be a little bit wrong because theirs are all
16 pretty sound and reconciled with each others'. But I
17 recall Pam and some guy, partner, at the public
18 meetings -- which were over in January of '06, so I am
19 saying sometime in December -- interested in the
20 project's approval, expressing interest in assisting in
21 the financing of both the acquisition and the
22 development. I wasn't overly interested in what they
23 had to offer or say because I felt like I had a
24 reasonably sound commitment from D.L. Evans.

25 So after the approval in January, I made a

1 formal request verbatim like I did to -- it was the same
2 package --

3 Q. You are talking about a request to D.L. Evans;
4 right?

5 A. Yes. It was the same package that you guys
6 ended up with, or the Bank of Commerce ended up with.
7 And their response was exactly the same as Bank of
8 Commerce's, it's just that it happened two months prior.
9 So when they turned down the 2.8 which included this
10 reimbursement that really was going to go back and
11 reimburse my working capital and afford my ability to
12 debt service this debt -- right? So they said, no, we
13 would like you to keep some skin in the game.

14 So then I opened the door to Pam, let's see
15 what else you have got, or let's see what you have got.
16 And that's really where the evolution of me and Bank of
17 Commerce started. It wasn't necessarily a denial like
18 represented from D.L. Evans, it was just a denial of
19 what I was requesting.

20 And so my recollection is that I first met
21 with Steve and Pam early April, maybe late March.

22 Q. Of 2006.

23 A. Yes. And we went over this package several
24 times to get an understanding, supplemented it with
25 maybe a financial statement or balance statement from

1 Rudd & Company, until Steve felt like he had a handle on
2 the project. And it seems like that took several weeks.
3 And then it seems like sometime around April 21 we met,
4 almost as a final meeting but a first formal meeting of
5 this understanding of the request.

6 Like I say, I might be wrong, but just no way
7 did this happen in three weeks. In fact I even believe
8 that it was proposed and -- I believe that it was
9 proposed to Bank of Commerce and then sent back for
10 supplementation and then repropoed -- anyway, that's my
11 recollection. It's a little bit different than
12 everybody else's and mine could be wrong.

13 Q. I appreciate that. That's helpful to at least
14 have an idea from your standpoint of the time frames.
15 But going back to the D.L. Evans, I mean part of the
16 reason why you moved to the bank or at least were
17 looking for somewhere else to finance the project is
18 because at some point D.L. Evans had not necessarily
19 denied your request, but didn't approve it the way you
20 wanted it approved.

21 A. That's right.

22 Q. So that was kind of the timeframe of when you
23 went to Pam.

24 A. That's right.

25 Q. Other than D.L. Evans -- now, you said

1 something about some gentleman or someone at the public
2 hearings --

3 A. Pam's associate.

4 Q. So were they there because -- and they had
5 expressed interest in doing the project, and when I say
6 doing the project, I guess I am saying providing the
7 financing to acquire the project.

8 A. And then once I told her that I thought they
9 had the acquisition covered, then they were interested
10 in supplying financing for the development through, you
11 know, pension fund money, insurance money, private
12 money, anything but hard money.

13 Q. But you weren't that interested in those funds
14 because you thought you had D.L. Evans?

15 A. No, that's not right. I wasn't interested in
16 the development money because I just wasn't there yet in
17 the project. We were still wrapping up final approval,
18 annexation, and so forth. And I wasn't interested in
19 other acquisition money because I thought I had
20 everything --

21 Q. You thought you were good with D.L. Evans.

22 A. Yes.

23 Q. Did you shop at the Bank of Idaho?

24 A. I didn't shop it to anybody because we were
25 received so well the first shot. In fact, it might have

1 even been Kim Webber that reached out first before I
2 started even looking for money it seems like.

3 I had known Kim Webber from back when he was
4 with the Small Business Administration prior to D.L.
5 Evans and had a reasonably good relationship with him.
6 I believed that it may have been that he reached out to
7 me in August when we had just started the public process
8 to see if he could be of any benefit to the project.
9 And I am not sure if that's how it happened, but it
10 strikes me that that's how it happened.

11 So once we got that initial commitment, a
12 conditional commitment providing values or where you
13 think they will be, providing your costs or where you
14 think they will be, and providing that it reconciles
15 with an appraiser's prediction or estimation of
16 absorption and values and all of that. Conditional on
17 all of these things being whatever, this ratio.

18 So I didn't even know if we need or could get
19 one half million dollars, two and a half million
20 dollars, three, just didn't know for sure until you
21 really get the firm numbers. But we knew numbers like
22 costs would be between \$8,500 and \$12,000. Values would
23 be between 25,000 and \$32,000. We knew those enough to
24 get us a range. We knew that within that range would
25 still comfortably allow a 50 percent loan to value and

1 cover our costs.

2 Q. But the request to D.L. Evans was for 2.8
3 million or did you have a specific request?

4 A. The first request was for I am going to say a
5 quarter million. I know, I have seen the numbers to 80
6 Acres, Inc., but I'm not certain that they are
7 necessarily that accurate either. I don't know that
8 they necessarily represent what I put down as earnest
9 and what I put down, you know. So I am going to say a
10 quarter million dollars.

11 And then a conditional approval on an
12 undefined amount of money based on values. And based on
13 absorption rates and all of that, reconciling with an
14 appraiser.

15 Q. But at that time did you have a specific
16 dollar amount you needed or were you just saying -- I
17 think you said it could have been a million, it could
18 have been a million and a half?

19 A. A million and a half to two and a half or
20 three. It just depended on what the values were and
21 what the cost were, what the project was worth.

22 Q. But you knew you had to come up with at least
23 2.1, right, to acquire the Wood property?

24 A. Sure.

25 Q. But you didn't have a defined request to D.L.

1 Evans, it was just give me whatever you can.

2 A. No, that's not right either. We had something
3 with D.L. Evans that was conditional on values,
4 conditional on equity. Much like you would go into a
5 bank and get a preliminary approval of \$250,000 to
6 purchase a house providing that your income was X,
7 providing that the value of the home was this, providing
8 that the cost was this, and providing that there was an
9 equity position of 30 percent, how's that. We can see
10 that you could debt service that balance.

11 Q. So that's what you had with D.L. Evans?

12 A. Something similar to that. It's not quite
13 that. With commercial -- you ask for something
14 arbitrary and what you offer in exchange for a
15 commitment to something that arbitrary is a condition of
16 equity. So providing you have an equity position of 60
17 percent, so your loan to value is 40 percent, say, and
18 you can keep doing that until you get to, say, 5
19 percent, say I want to borrow 5 percent of its appraised
20 value, you see what I am saying, you can get a
21 commitment on an arbitrary undefined amount of money.

22 Q. So eventually D.L. Evans came back and you
23 said would loan you 2.2 million.

24 A. So after that commitment then I went back to
25 them with a request for \$2.8 million with an appraisal,

1 with all of these things, an appraisal produced for D.L.
2 Evans, a pro forma with actual costs based on engineer's
3 estimates, all of that stuff, that package that was
4 given to Bank of Commerce.

5 That package was given to D.L. Evans,
6 requested \$2.8 million, requested exactly like it was
7 requested of Bank of Commerce, leave my 80 Acres, Inc.,
8 financing alone. You can have the balance of its value.
9 Give me this amount of money to, No. 1, debt service the
10 \$2 million to Mike Wood, which I think that was about
11 the balance, I think it was \$1,900,000 after the 140
12 payoff, it was under \$2 million; and then give me two
13 years capitalized, no interest; and then give me my
14 receipts back for what I have spent. You are still at a
15 loan to value, you know, of under 50 percent, loan to
16 value.

17 And the answer was very similar to Bank of
18 Commerce's, no, we will give you what you need. We want
19 you to keep the skin that you have got in there in
20 there. But at the time I had this bird in my ear saying
21 we can do better, we can do better, call Pam. Then
22 Steve came in and I explained to him what had gone on
23 with D.L. Evans. I don't see any reason why we can't
24 get you that. Went through the project at length.

25 And that process started dancing really close

1 to my deadlines and I was extremely agitated and nervous
2 and anxious about us approaching that to the point that
3 I did say to Steve, we are passing a point of no return.
4 I have either got to get a commitment on the amount I
5 need to perform elsewhere or you have got to give me
6 something concrete that we can go to sleep on.

7 So I got a preliminary approval that had no
8 conditions, it had been reconciled by their review
9 committee. He got an answer back from the board, the
10 board of directors.

11 Prior to this meeting, you know, prior to this
12 meeting -- now, I don't know if it was formal. I don't
13 know if it was one of those Thursday night meetings
14 before a Tuesday morning meeting, I don't remember that.
15 But I got something back that satisfied me that we were
16 committed, we were solid, we were moving forward.

17 And then we met on May 3 to go over the Black
18 Cliffs Development title issues that we needed lien
19 waivers on from the undivided interests in Black Cliffs
20 Development. And then we met on the 8th, I believe, or
21 the 9th, or we spoke on the 9th, I guess, about the 80
22 Acres, Inc., piece. And I know Steve testified or
23 whatever you call it that you do in a deposition that I
24 had always represented that we could get subordination
25 on 80 Acres, Inc., and it was absolutely false, never

1 represented that, never hinted to that. And the notion
2 seems just silly to me that why would 80 Acres, Inc.,
3 give up a first position with no consideration.

4 Q. But you said they didn't want the cash.

5 A. They didn't want the cash, but they certainly
6 wanted the collateral until they get the cash. That
7 just seems so naive for a grown man to say something
8 like that. Yes, we have a first position.

9 It would be like me buying a car and then
10 going to the bank the next day and saying, by the way,
11 can I have my title. I understand I still owe \$50,000
12 on this car, but could I have the title so I could take
13 it over here and get another loan on that title.

14 It just seems -- I just heard that out loud,
15 didn't I -- crazy to me that he would think that, that
16 he would think that I was a sound minded person by
17 representing that these guys have a first position and
18 for no consideration they are willing to give it up.
19 Why would they. It's just silly.

20 Q. I want to come back and we will talk about
21 some of that stuff. You thought you were good with D.L.
22 Evans and it turned out you weren't, or at least you
23 didn't like --

24 A. No, you are putting words in my mouth.

25 Q. It turned out you didn't like the deal that

1 D.L. Evans offered you.

2 A. That's not what I said at all.

3 Q. Let's put it this way. You didn't accept
4 whatever D.L. Evans offered you.

5 A. That's not fair either.

6 Q. What is --

7 A. You can say what you want, I don't care.

8 Q. I'm just trying to --

9 A. If you would like me to tell you what
10 happened, I'd be happy to.

11 Q. Go ahead, tell me.

12 A. I asked for \$2.8 million, they turned it down.
13 They said that we don't want to go 2.8 million but we
14 may resubmit it at \$2.2 million be fine there. Then I
15 didn't respond.

16 I contacted Pam and said I was hoping to get
17 this working capital, this money that I have invested in
18 this project back based on the premise that the equity
19 was enough to cover it. If you think you can do better
20 than this, let's see what you have got. And she says I
21 think I can do better than this. Here is what I have
22 got. And she provided Steve Worton. I meet with Steve
23 Worton, Steve Worton says I think we can get you what
24 you want. I don't respond to D.L. Evans.

25 Q. So you made a choice to go a different

1 direction at that point.

2 A. No, I made a choice to explore another option
3 before I made a decision.

4 Q. But at some point you didn't go back to D.L.
5 Evans, you never went back to D.L. Evans at any time and
6 explore another option with D.L. Evans.

7 A. That's right.

8 Q. And I think Pam testified she had this out to
9 lots of different people clear back in 2005 even.

10 A. (Witness shrugs shoulders.) I don't know.

11 Q. So were you working with her -- you don't
12 remember when you started working with Pam?

13 A. I never really worked with Pam. Like I told
14 you before, I'll restate it, that she was interested in
15 the project. When she learned that there wasn't a need
16 for the acquisition money, she started pursuing avenues
17 for development money. Not at my instruction, not at my
18 request, on her own will, so that she might have them in
19 anticipation of my need of them.

20 I expressed to her that I wasn't interested in
21 exploring the development money at that point. And then
22 it left there for 60 days until D.L. Evans come back
23 with 2.2 million -- or not 2.8 million. You can't have
24 any money back, is what it really boiled down to, you
25 can't have any money back.

1 I didn't say no to D.L. Evans. I didn't make
2 a choice, I just wanted to find out what the other
3 choices were before I made one, and it simply evolved
4 into --

5 Q. Did D.L. Evans say no to you?

6 A. No, they said no to \$2.8 million.

7 Q. You have been involved in lots of different
8 financing for commercial property, haven't you?

9 A. No; some.

10 Q. But you have done some. Is 20 days a pretty
11 quick turn-around on a commercial development
12 acquisition loan?

13 A. Yes.

14 Q. I know the time frames, we may have
15 differences of opinion on when those time frames were,
16 but based on at least Pam and Steve's recollection, from
17 the time that Steve was presented this and the time that
18 the loan actually closed was 20 days; correct?

19 A. Yes.

20 Q. I want to go back to what you talked a little
21 bit about this commitment that you had received from
22 Steve Worton and the bank. You understand based on the
23 testimony of Mr. Worton and the documents that the loan,
24 at least from the bank's standpoint, was considered and
25 approved one time; correct?

1 everything in that package was complete, true, correct,
2 verified, whatever, that we had a deal.

3 Q. And the April 25 date, is there some reason
4 that that's --

5 A. No, no.

6 Q. That's just a day you --

7 A. Just plucked out of the air. So after the
8 25th it became about reconciling the package with facts,
9 meaning title searches, contacting the appraiser,
10 putting it in the bank's format, all of that stuff.

11 Whether I am right or wrong, I want you to
12 understand I don't care and it shouldn't be a principal
13 point of this whole case. I am just saying that this is
14 my recollection of it.

15 Q. I understand.

16 A. Even more impressive if you first got this
17 package on the 21st and still closed it on the 10th,
18 even more impressive. The board had seen this, as far
19 as I understand it, prior to the meeting that they had
20 on the 8th or 9th.

21 Q. What is it that you base that belief on?

22 A. Oh, a few things. I think my buddy's
23 father-in-law, Bill, is on the board and I think he
24 mentioned it to Mike that the board was impressed with
25 the project and were considering it and they had a few

1 A. Yes.

2 Q. And what date do you understand that to be?

3 A. The 8th or 9th. The 8th.

4 Q. Or maybe the 9th? We can look at it.

5 A. Maybe.

6 Q. In that May 9, 2006, timeframe.

7 A. Yes.

8 Q. Now, you talked about a prior commitment.
9 Tell me about that specifically. When was that --

10 A. I can't. And I want you to hear me disclaim
11 what I am saying because it's very easy to just say I
12 don't know, and I am happy to say that if you prefer
13 that.

14 But my recollection is such that it took three
15 weeks to get it past Steve's understanding. He really
16 was diligent, did a fantastic job of understanding the
17 project. Prior to presenting it to anybody.

18 So I am humbly proposing that it's possible
19 that the 21st, April 21st meeting, that Pam and Steve
20 have offered as the first meeting was simply the first
21 formal meeting of understanding this request,
22 understanding this project, but it was post due
23 diligence.

24 And then after that I think that it got ran up
25 the flag pole and on the 25th of April we knew that if

1 questions and throwing it back to Steve. So that sticks
2 in my mind because it surprised me that there was a
3 board member that was related to a good friend of mine.
4 So that sticks in my mind.

5 It sticks in my mind that Steve had some
6 questions that the board needed clarification. That
7 sticks in my mind, that I had to do some running around
8 and research for them.

9 Yes, there are four or five things that just
10 stick in my head that it had gone pretty quickly past
11 the pre-review, whatever you guys call it, the summary
12 board, I'll just call it that, right, and went to the
13 board of directors and got tabled waiting for some
14 supplemental information.

15 And then it's my recollection that at the
16 final board meeting that Tom Romrell was not there but
17 the board had voted on the project in favor of the
18 project and that the board had dispersed and that Tom
19 Romrell came in, back from being on vacation. I'd be
20 willing to bet you a thousand dollars I am right on this
21 just for fun, if you go back.

22 But Tom was gone during the board meeting and
23 came back and objected to this with this understanding
24 that there needed to be a first position. And then
25 Steve and Tom actually made effort to round the board

1 back up to bring them back in for clarification, but at
2 that point there was a board member or two that had left
3 town.

4 Q. And what do you base that belief on?

5 A. This crystal clear memory of mine. I can
6 remember quite clearly Steve and I being in a panic to
7 get the board members back to clarify to Tom, to Tom's
8 satisfaction, that they had approved it with the 80
9 Acres, Inc., piece remaining as it were set up, as it
10 were set up with 80 Acres, Inc., with the financing that
11 was existing.

12 Q. So you are talking about the bank being in a
13 second position on the 80 Acres --

14 A. I don't even think it was defined as second
15 position. I think the only mention of subordination
16 was -- in the terms of the 80 Acres, Inc., piece as the
17 payments were made to 80 Acres, Inc., there were parcels
18 of this land that were actually freed up.

19 So it wasn't a global all or nothing 67 acre
20 pay off. As I paid these \$34,000 annual payments, parts
21 of that piece of land became free of encumbrance. And
22 as they became free of encumbrance they subordinated to
23 the Bank of Commerce because the Bank of Commerce piece,
24 the Wood piece, depended as I had it designed on the 80
25 Acres, Inc., piece.

1 Q. I want to go back to the question I have about
2 what do you base your belief on that, other than just
3 your -- I mean is there anything in writing or anything
4 else that makes you believe Tom Romrell wasn't at the
5 board meeting?

6 A. I remember Steve just almost apologetically
7 explaining to me that Tom didn't understand it because
8 he wasn't at the meeting, and that it was important to
9 Steve to get the board members back to iterate their
10 whatever wishes, whatever they voted on to Tom.

11 Q. So it's based on what you claim Steve Worton
12 told you.

13 A. It was based on my memory of a bunch of
14 conversations with Steve. The circumstances that Tom's
15 mind needed convinced of the board's intent, like I
16 remember that pretty clearly. I remember Steve saying
17 that Tom never liked the project, which I don't know
18 why, but that just sticks in my head.

19 Q. And when were these conversations that you
20 recall with Steve Worton?

21 A. Within that 48 or 72-hour period prior to
22 closing.

23 Q. So if the loan closed May 10, these would have
24 been --

25 A. The 8th, 9th, 10th.

1 Q. Now, back to this idea of, as you called it,
2 kind of a precommitment, was there a precommitment given
3 to you in writing?

4 A. There was nothing given to me in writing.

5 Q. So this precommitment idea that you are
6 referring to again related to what you claim Steve
7 Worton told you?

8 A. Everything was related to what Steve Worton
9 told me because there wasn't one thing in writing,
10 nothing. There wasn't an approval in writing, there
11 wasn't a list of conditions in writing, contingencies in
12 writing. There wasn't a formal request in writing.
13 Nothing was in writing.

14 Q. The conditional approval that you got from
15 D.L. Evans, was that in writing?

16 A. Never got a conditional approval.

17 Q. I thought you said you had kind of a
18 conditional approval with them, if it came within these
19 parameters, is that not what you told me?

20 A. No, I had a preliminary approval based on
21 these assumptions, and that was just verbal.

22 Q. So that preliminary approval with D.L. Evans
23 was a verbal.

24 A. Yes.

25 MR. TUCKER: Let's take a little break.

1 (Short recess.)

2 MR. TUCKER: Back on the record.

3 Q. I am going to refer to a paragraph in your
4 amended complaint -- I should say your answer to our
5 amended complaint and your counterclaim. These are
6 legal documents filed by your attorney regarding this
7 case.

8 In Paragraph 10 of that Amended Counterclaim
9 you state that Steve Worton on behalf of the Bank of
10 Commerce informed Jefferson that the loan pertaining to
11 the Southern Hills project had been approved by the
12 board of directors of the Bank of Commerce.

13 Is that that April 25 phone conference you are
14 talking about?

15 A. I don't know for sure if it was April 25, but
16 yes.

17 Q. But you believe it was sometime prior to May
18 9, 2006.

19 A. Yes.

20 Q. I think you said that was over the phone.

21 A. Yes.

22 Q. And nothing in writing.

23 A. Yes.

24 Q. So that April 25 date is just your best guess
25 as to when that was?

1 A. Yes.

2 Q. Also in Paragraph 10 it says, The board's
3 approval recognized that the bank would have a second
4 mortgage on the 80 Acre parcel which would preserve the
5 favorable financing arrangements enjoyed by Jefferson as
6 well as leaving intact other liquid assets of Morrison,
7 the related entities of Jefferson.

8 How did that approval from Mr. Worton
9 recognize that?

10 A. Because the approval -- I understood that it
11 was approved based on the request modified only to the
12 extent of the amount loaned. And in the request, which
13 this (indicating) was part of the request, Exhibit
14 No. 21, it laid out that I wanted money and that there
15 would remain this outstanding debt on 80 Acres, Inc.,
16 these terms right here (indicating).

17 So when it was first brought to my attention,
18 the very first time that it was brought to my attention,
19 it was brought to my attention by Steve on I believe the
20 9th of May. But Mr. Romrell had issues with the second
21 position on 80 Acres, Inc., and understood that there
22 was to be a first position to the Bank of Commerce.
23 Then my response was -- and Steve also expressed to me
24 that that was not the understanding of the board who
25 voted on it. That the board voted on my proposal as

1 proposed.

2 Q. But that's talking about the May 9 decision.

3 A. Yes.

4 Q. I am asking about this what you called kind of
5 this preapproval, on this April 25 approval when Steve
6 Worton called you.

7 A. Yes. Like I said, I don't know if it was
8 April 25, but it was prior to the 9th.

9 Q. But, again, that wasn't in writing.

10 A. No.

11 Q. Nothing in writing that said that the bank
12 would take a second position of that property.

13 A. No.

14 Q. At that point, and I am just using this April
15 25 date, not because -- you are not sure when it is --

16 A. It could have been March, it could have been
17 May 2.

18 Q. Whenever it was, were you at that point
19 committed to accept that loan from the Bank of Commerce?

20 A. Yes.

21 Q. So you had to accept the loan?

22 A. In a practical sense, yes, because I had to
23 perform by a certain date, and I hadn't been pursuing a
24 loan with anybody else.

25 Q. But I am saying legally were you obligated --

1 A. No.

2 Q. You weren't obligated to accept the loan that
3 the bank gave you.

4 A. Not legally; I could have lost the project.

5 Also when that information was given to me by
6 Steve on the 9th that Tom was requiring a first position
7 and didn't care how it was provided, but he was
8 requiring a first position, I'd made several offers to
9 mitigate the impact of, No. 1, losing those favorable
10 terms with the 80 Acres, Inc., and also providing a
11 window of time for clarification so that I wouldn't have
12 to give up that working capital, which I told Steve
13 would be detrimental to my business if I were to give it
14 up. So what I offered him was I will give you the 700
15 and some thousand dollars, put it in the bank for a week
16 until you can reassemble that board and make
17 clarification to Tom. That was one offer.

18 The other offer was leave that financing with
19 80 Acres, Inc., in place and apply that same dollar
20 figure to the principal of the Wood property, which
21 would leave you in exactly the same position, bank, but
22 it would also leave my terms in place with the 80 Acres,
23 Inc.

24 So I even offered to Steve to offer Tom, make
25 the loan less, make the loan seven hundred and some

1 thousand dollars less on the Mike Wood property and
2 apply that money to the Mike Wood principal. I offered
3 him five things like just to mitigate this, because once
4 that loan was paid off, it's paid off, those terms are
5 gone, I can never rehave those terms again.

6 Q. Explain, make the loan less?

7 A. Yes.

8 Q. If the loan is less, how do you close on the
9 Mike Wood property?

10 A. Because I take the same amount of money that I
11 had to come in to closing with to pay off the first
12 position of 80 Acres, Inc. I could bring that same
13 amount of money in and put it on the principal of the
14 Mike Wood property, which would make my financial
15 statement, my balance sheet far more appealing.

16 Q. You are saying -- still you wouldn't get the
17 subordination or the paying off the 80 Acres, Inc.?

18 A. Right, but their exposure dollar for dollar
19 would be the same, because rather than loaning 2.2
20 million they would be loaning 1.5 or 1.4 something and
21 then that money that was paying the 80 Acres, Inc.,
22 piece would go to the principal of the Mike Wood
23 property.

24 I offered a ton of things to not have that
25 happen. It was horrible. And there was nothing to do

1 about it. We couldn't wait until the next board
2 meeting, we couldn't wait. I said loan more, loan less,
3 do anything but ask me to do what you are asking me to
4 do.

5 And Steve took all of those, Steve would say,
6 okay, I'll call you back, and he would call Tom --

7 Q. But you understand that the decision, whether
8 the bank agrees to loan money or not, that's a decision
9 they have; correct?

10 A. Yes.

11 Q. They are not obligated to accept your proposal
12 just because it's your proposal, are they?

13 A. No, but that's how it was applied for. Since
14 there weren't any stipulations against the way it was
15 applied for, we moved forward.

16 And nowhere in my -- there are documents in my
17 writing that say that the debt will still remain. There
18 is nothing in there that implies 80 Acres, Inc., will
19 subordinate, the note will be satisfied, submitted as
20 collateral to the bank; nothing, nothing like that.
21 Didn't want that. It doesn't work.

22 Q. But you wanted 2.8 million as well; right?

23 A. Yes.

24 Q. And you realized that what you want and what a
25 lender may eventually approve are not always the same

1 thing?

2 A. Absolutely. Two totally different issues.
3 One is I can't have my cash that's been spent
4 reimbursed. The other thing is that they have approved
5 this loan based on, No. 1, my income and my capacity to
6 earn. No. 2, my liquidity and ability to debt service
7 over time because we knew this project wouldn't generate
8 a dime based on these numbers that I provided the bank
9 as a break even point of year four or year seven. So it
10 was going to require debt service for a period of time.

11 Keep in mind the reimbursement wasn't to come
12 to my pocket, it was to go to a CD to debt service the
13 darn loan at Bank of Commerce. That's one issue, I can
14 live without that issue.

15 The problem was we have approved you based on
16 your capacity to earn and your capacity to debt service
17 this loan and now you fully acknowledge, Steve,
18 everybody acknowledges there is not an option for
19 subordination, guys. They are not going to just for
20 free give up first position, we have to pay this off if
21 we want first position. In order to pay that off we are
22 going to liquidate our working capital, which will
23 substantially affect our ability to earn because we are
24 a spec home construction company, \$700,000 borrows \$3
25 million; right? 20 percent, you know, so whatever, \$3.5

1 million, I guess.

2 Q. But you continued to operate after that,
3 didn't you?

4 A. No, we suffered, we bled, desperately. So
5 when I told Steve this, you understand there is no way I
6 can maintain my business without my working capital.
7 That working capital will disappear if I do what you are
8 asking me to do. If I don't do what you are asking me
9 to do, I lose this project and every dime that I have
10 spent on this project to date. So I'm at a mitigation
11 point, crossroads right now.

12 Steve says there is no way the bank wants you
13 to fail, there is no way that the bank wants this to
14 fail, there is no way the bank wants this as an asset.
15 So do whatever you think is the right thing for you to
16 do, but if you do this, my hunch is that you will be
17 able to come back into this bank and they will consider
18 whatever your loss was.

19 So we did that, and we did come back into the
20 bank several months later with applications for
21 construction money to continue our operation in Stone
22 Creek Estates and were denied that. And we brought that
23 in at the encouragement of Steve.

24 So we moved forward understanding that it
25 would be the bank's effort to mitigate this impact of

1 this new requirement on our business.

2 Q. And that's based on what you claim Steve
3 Worton told you?

4 A. He didn't say those words, but yes.

5 Q. And did he give you something in writing to
6 that effect?

7 A. He didn't give me anything in writing for
8 anything.

9 Q. So as I understood what you said, these are
10 operating funds you think he was promising you?

11 A. No. The ability to operate without those
12 funds. I don't think he was promising it, I think he
13 was using some common sense argument that there is no
14 way that the bank won't do this.

15 Q. So you didn't view that as a loan commitment
16 from the bank?

17 A. No, I didn't. It was just one penny of a
18 dollar's worth of consideration on what to do at that
19 crossroads at that point in the 11th hour.

20 Q. Ultimately you decided that you would accept
21 the terms that the bank offered and close the loan.

22 A. Yes. But I mean there was a temporary
23 atmosphere to that commitment, too.

24 Q. What do you mean by that?

25 A. Meaning I felt like that we would probably go

1 back to the table afterwards and figure something else
2 out. Because it was so clearly expressed to Steve that
3 from a common sense point of view I cannot continue to
4 operate my business as we are doing now without this
5 working capital.

6 Q. Now, you say you thought there would be. Are
7 you saying there was a commitment on the part of the
8 bank?

9 A. No.

10 Q. That's just what you thought would happen.

11 A. Yes. That was a consideration that I made in
12 choosing to do what I did.

13 Q. So that was just your own belief that I think
14 I can maybe go in and get some financing to replace
15 my --

16 A. Some consideration, yes; from the bank, yes.

17 Q. From the Bank of Commerce or somebody else?

18 A. No, the Bank of Commerce, the only one --

19 Q. That wasn't a commitment of Steve Worton or
20 anybody else at the bank, that's just what you thought.

21 A. That's right. But the thought wasn't free of
22 root, it came from the idea that there is no way that
23 this loan could happen if you didn't have that working
24 capital. The bank knows that you have to have this
25 working capital to make this loan work, to debt service

1 this loan, to continue business making money.

2 Q. Was this loan a bridge loan?

3 A. It was.

4 Q. Under this loan you didn't have any debt
5 service requirements on this loan for a year, did you?

6 A. Sure I did. That was expressed the other day,
7 too, or today -- or yesterday, because it was an annual
8 lump sum interest payment that was due, but it still had
9 to be maintained.

10 Q. What do you mean by maintained?

11 A. The project wasn't going to increase in value
12 at the rate of the interest.

13 Q. But you had the opportunity, I mean on May 9,
14 2006, you don't own anything as it relates to the Wood
15 property other than the option.

16 A. Yeah, and the engineering and all of that,
17 yes, I own a lot of stuff, but I don't actually own the
18 deed, yes.

19 Q. You dumped a lot of money into the project but
20 the only thing you have is the option to acquire it.

21 A. Yes. And the equity. I mean I own the equity
22 at that point until it closes.

23 Q. Well, until you close on it, until you own the
24 property, you don't even own the equity, do you?

25 A. Sure I do. By owning the option I own the

1 equity. Once the option expires I lose the equity, yes.
2 So by owning the option I own the equity at that time,
3 but I don't own the land that the equity is attached to.
4 I think that's a fair distinction.

5 Q. But the one year that you had, I mean during
6 that period of time, wasn't it your belief that you
7 could go out and find investors and maybe even sell the
8 project or bring somebody else in to help you with the
9 development?

10 A. No. That was initially the belief, not the
11 structure of the loan, so I'll tell you exactly what the
12 belief was. The belief was that in a worst case
13 scenario I had \$2.2 million obligation that I needed to
14 satisfy and actually the 80 Acres piece could be
15 maintained over the next five or six years at \$35,000 a
16 year, which was nothing at that time. So I had the
17 option always to take whatever working capital I had,
18 and at the time I had other equity, too, that amounted
19 to essentially a million dollars.

20 So, you know, worst case scenario in a year
21 from that point we could refinance it, get an extension
22 and offer more collateral or offer more cash or discount
23 the loan in some fashion to make it more appealing to
24 continue with another lender or with the same lender.
25 So those were options that were considered as an exit

1 strategy failing to find investors or partners.

2 But that said, it was never an option to sell
3 the project at that time. That option only came after
4 2009, in the interest of mitigating the risk to the
5 bank. But at the time it was really to find investors,
6 find partners, get the thing in motion. A gamut, a
7 rainbow of options in there, short-term investors,
8 partners, any of that stuff.

9 But the critical main thing that it hinged on
10 was our ability to go in and demand as a builder
11 building 20 percent of the permits issued at the time in
12 the City of Pocatello, we have this to offer you as a
13 partner, an investor. We get to commit to you that we
14 have a line of credit of \$3.5 million with Washington
15 Federal that we can produce homes on these lots for. We
16 can become our own market. We are a strong partner
17 financially, we have something to lose, we personally
18 guaranteed this partnership and this land.

19 All of those things wiped out with this change
20 of condition.

21 Q. So if that is the case, you really were wiped
22 out by that change of condition, why did you close the
23 loan?

24 A. Because at the time it seemed like the best of
25 all evils, the best of the worst, maintain the equity,

1 then go back into Bank of Commerce and re-establish some
2 kind of operating line of credit, utilizing this equity
3 of seven hundred and some thousand dollars that we had
4 just contributed to this project, this new unanticipated
5 equity. Something, something, anything.

6 But it really was a choice between losing the
7 equity in this project or losing the ability to make
8 this project a success after you do maintain the equity
9 in the project. In the hopes and the understanding that
10 the Bank of Commerce doesn't want to see it fail, they
11 will step up and facilitate whatever they have caused in
12 deficiency.

13 And the understanding wasn't a speculative
14 whim, it was extremely sound. You couldn't have
15 approved the project the way you funded the project. I
16 don't even think you could have legally done the project
17 the way you did the project because we had no money.

18 Q. Who couldn't have legally done it?

19 A. The bank. We had no capacity at that point to
20 debt service anything. We had no capacity at that point
21 to offer a partner anything of consequence.

22 Q. Wait a second. You are suggesting that
23 legally the bank couldn't make the loan?

24 A. I don't know, okay? I don't know. I am
25 saying that it was so unsound the way that it was, so

1 they processed it with X amount of money as working
2 capital, and this liquidity that this buyer has.

3 And by Steve and everybody else's accounting
4 without that or if it was \$723,000 less than that, no
5 way could I have recommended the loan and no way would
6 the board have approved it. But that's what the bank
7 made happen, by requiring this new stipulation of first
8 position.

9 Q. Do you have some basis to believe that the
10 bank legally couldn't make this loan to you or --

11 A. No, it just seems completely unsound. It
12 seems like you are loan sharking at that time. You are
13 lending money anticipating failure and anticipating
14 getting the land back.

15 Q. Is that what you think the bank did?

16 A. I don't think the bank thought. I think the
17 bank should have taken any of the six options I offered
18 them to buy that amount of time to clarify what the hell
19 they were doing. They should have done that, I'll die
20 thinking that.

21 That was unsound what they did, it was
22 absolutely unreasonable to at that point say your option
23 is either to forego \$5 million of equity, of potential
24 equity, or give up every ounce of operating capital and
25 your means of income, your ability to earn, and your

1 ability to debt service the very loan that you are
2 committing to.

3 And it's totally against our policy to do
4 that, it's not in our regulations, it's not in our
5 protocol for approval, it's not in any of these things.
6 We know, we recognize that if you pay this land off,
7 it's coming -- like we recognize that's where the money
8 is coming from, is from your bank account, because that
9 was clearly stated to Steve and clearly stated to Tom by
10 me.

11 Q. So you are saying that when you closed on this
12 loan on May 10, that you knew that you wouldn't be able
13 to keep that property, you didn't think you had any
14 chance in the world of being able to come up with some
15 plan to salvage this property?

16 A. No, that's not fair. I had 48 hours, I hadn't
17 digested everything, I hadn't processed every option. I
18 think the bulk of that 48 hours until maybe -- actually
19 until 11:30 the day of closing my efforts were to change
20 Tom's mind. They weren't how can I make this work in
21 these conditions.

22 But my conclusion at that time, without
23 processing and without digesting the whole thing is
24 there is absolutely no way that I can maintain this
25 income that's depending on this \$3.5 million line of

1 credit. There is no way I can maintain the same income
2 without that capital that secures or enables this line
3 of credit. That seems like common sense. I didn't know
4 if I was going to get lucky the next day and land some
5 hospital job that I could build a hospital, I didn't
6 know that for sure.

7 So, no, my failure wasn't inevitable, it was
8 just absolutely unknown, and I didn't know what the
9 right thing to do was. And I begged Steve for counsel,
10 I begged Tom for counsel.

11 Q. Ultimately, though, the decision was yours.

12 A. It was, and the decision considered those
13 other things that I just said. They considered the
14 bank's ethical obligation to facilitate or to compensate
15 or to cover, mitigate what they had just taken --

16 Q. Wait a second. You are saying some ethical
17 obligation again. Was there some discussion about some
18 impropriety or ethical obligation at that point?

19 A. Not impropriety but there was a discussion
20 with Steve that says the bank doesn't want to see you
21 fail in this, the bank is not going to set you up to
22 fail. Just get through this and then go back and have
23 this conversation.

24 Q. Ultimately you had to decide what was best for
25 you?

1 A. I did, I did.

2 Q. And you made a decision.

3 A. I did.

4 Q. And that decision as you said was not based on
5 some promise of future financing.

6 A. No, but it was in consideration of those
7 things.

8 Q. Those are factors that you considered.

9 A. Yes, consideration.

10 Q. But not a legal commitment on the part of the
11 bank to provide financing.

12 A. Sure, that's right. And I honestly didn't
13 know what the equity position to my balance sheet would
14 do. There was part of me that thought maybe the
15 increase in this equity, the increase in my balance
16 sheet, maybe that changes things, you know, maybe that
17 provides another avenue for continued financing --

18 Q. But there's lots of opportunity --

19 A. Yes, but there is no way to know that at 11:30
20 on Thursday, the day we are closing.

21 Q. I know Jefferson Enterprises paid a loan fee
22 at closing to the Bank of Commerce.

23 A. Right.

24 Q. Prior to that, Jefferson Enterprises didn't
25 pay anything to the Bank of Commerce, did they?

1 that's it. 2.2 for one year.

2 The words weren't saying everything else in
3 your application or loan request are acceptable or
4 approved, but there was certainly the effort to clarify
5 the changes to my loan request and application.

6 Q. So they were telling you what they thought the
7 changes would have to be.

8 A. Yes.

9 Q. In order to even have the board approve that
10 loan.

11 A. It was more than that, it was somebody had
12 said we could do this. If everything checks out, after
13 due diligence, if everything checks out as you implied,
14 we could do this, it was that far.

15 Q. Again, we have a difference of opinion. Steve
16 Worton has testified that he thought that you would be
17 subordinating the 80 Acres, Inc., property.

18 A. Yes, I heard that. Again, never ever
19 expressed, implied, ever.

20 Q. Did you ever approach the 80 Acres, Inc.,
21 people? I think you said you did.

22 A. I did, that last day. The day of closing I
23 called Ashley Lyman up and I said I know this is going
24 to sound insane to you, but is there any way that I
25 could pay you some portion of the balance outstanding

1 A. They did at the end of the term.

2 Q. I am talking about prior to the loan --

3 A. I don't know. I think that there was some
4 money paid for an appraisal that was ordered by D.L.
5 Evans but paid for by the Bank of Commerce. I think
6 that happened. I am not positive of that, though.

7 Q. I'm saying did Jefferson Enterprises pay the
8 bank any loan fee prior to closing?

9 A. Not that I am aware of.

10 Q. I want to go back, I don't want to spend a lot
11 of time on this April 25, I know it's not the exact
12 date, but this precommitment. That was just we think
13 we might be able to get something approved, I mean it
14 was --

15 A. No, it was more than that.

16 Q. Not in writing but --

17 A. Nothing was in writing, understand me saying
18 that.

19 Q. What were the terms of this loan that the bank
20 had committed to you at that time?

21 A. I believe there was an interest rate
22 expressed. I believe that there was a condition or a
23 change from my application that was spelled out in the
24 amount, the loan amount, not 2.8, we will do 2.2. No
25 other conditions. And the term, one year. That's it,

1 for a subordination, anything short of the 700 and some
2 odd thousand dollars. Could I pay you a quarter million
3 dollars for your first position, I could I pay you a
4 half a million dollars, could I pay you \$699,000 for
5 your subordination.

6 Because the bank is requiring subordination
7 for your position in some form or another. They want
8 first position in order to close on this other piece.
9 And he responded exactly like any thinking person over
10 12 years old would have responded, with a chuckle, no,
11 you can't have the title to that car that you owe
12 \$50,000 on until you pay the \$50,000 off.

13 Q. At that time you had this preapproval. Did
14 you pay something to the Bank of Commerce to hold that
15 preapproval open?

16 A. You have asked that four times. No money was
17 paid prior to the loan fee. Nobody ever paid for a
18 preapproval to a bank.

19 Q. What was your understanding of the point in
20 time that Jefferson Enterprises became obligated to the
21 terms of the loan as offered by the Bank of Commerce?

22 A. Legally the day we signed papers.

23 Q. Up until the time you actually closed the
24 loan --

25 A. But practically before that, because we had no

1 other options.

2 Q. I understand you had these other sources or
3 influences that may have been causing you to act certain
4 ways, but legally you could have walked away from that
5 loan up until the minute you signed the documents.

6 A. Certainly. And that's really what the thought
7 process was, an evaluation of which is the greater loss,
8 which is the lesser evil, on that day. And it took some
9 doing to round up that money in that much time.

10 Q. How did Jefferson, you round up the money to
11 pay off the 80 Acres, Inc., loan?

12 A. Depleted almost all of its cash. Withdrew it.
13 Dug it up, unburied it.

14 Q. In Paragraph 13 of your counterclaim you state
15 that following the abrupt change in position, the bank
16 through its officers recognized that it would provide
17 additional financing to continue the Southern Hills
18 project, recognizing that its actions had impacted the
19 financial ability of Jefferson and other related
20 businesses to continue their operations by consuming a
21 substantial portion of the liquid financial reserves.
22 This representation was made prior to the time the loan
23 was to close and the time the Wood parcel was to be
24 purchased.

25 I thought you said there wasn't any commitment

1 are you laughing? Do you not want the answer?

2 Q. I do want the answer.

3 A. Then why are you laughing.

4 Q. What was the commitment?

5 A. I think the commitment was a little bit
6 ambiguous versus how you are trying to package it. And
7 I am aware of what that sounds like. The commitment was
8 the bank will do whatever it can to facilitate your
9 success.

10 Q. And this commitment was, again, verbally from
11 Mr. Worton?

12 A. Yes. And it was assuming the bank's logic --

13 Q. So the bank would have to approve it.

14 A. Yes. And probably define terms and all of
15 those things, you know.

16 Q. So none of that was decided or discussed.

17 A. That's right. The commitment was broad and
18 more in principle, you know, the bank will do what it
19 can to facilitate your success with this project and
20 continued income.

21 Q. I mean there wasn't this discussion, where you
22 said, okay it would be this much money for this long,
23 for this interest rate or --

24 A. That's right, you are right.

25 Q. In Paragraph 15 of your counterclaim you

1 on the part of the bank.

2 A. There wasn't anything in writing.

3 Q. I think you said there wasn't any commitment.

4 A. No, I think you asked me if there was a
5 commitment in writing. It was a little bit ambiguous
6 for sure, but, yeah --

7 Q. It was this idea maybe they would loan you
8 some money?

9 A. More than maybe; likely, very likely. And
10 that was the exact context without any flavor to it,
11 exactly the context. There was no way the bank wants
12 you to fail, they don't want to own this piece of
13 property, they are not going to do this. You know, get
14 some applications together for some homes and bring them
15 in.

16 Q. So you would have to go out and do something
17 and then they would maybe consider another loan.

18 A. I don't know if I went that far with it, even.
19 Maybe it was just offering a line of credit to continue
20 construction in place of what the capital would provide.

21 Q. So was there an offer of a line of credit?

22 A. No. There was the offer of the potential of a
23 line of credit.

24 Q. But you knew that wasn't a commitment.

25 A. I think that there was to the extent -- why

1 allege that the bank deviated from recognized lending
2 standards. What specifically are those lending
3 standards that you are referring to?

4 A. No. 1, making sure that the loan can be debt
5 serviced. No. 2, making sure that I have a loan to
6 value of whatever the market and risk warrant.

7 Q. I guess I am asking more about the standards
8 in general. Is there some recognized standards that you
9 are aware of?

10 A. I think that there are standards in a loan
11 having an ability to be successful or to be paid back or
12 whatever.

13 Q. What governing body recognizes these standards
14 that you --

15 A. I think it's probably just the industry. I
16 have never heard in my life of a loan that doesn't
17 require the capacity, the capacity, even if it's a long
18 shot, the capacity to debt service this loan. So we are
19 looking at a potential debt service requirement at the
20 end of that year of a quarter million dollars, maybe,
21 maybe.

22 And clearly no capacity to do that, none
23 whatsoever, not even a considerable minute chance that I
24 could debt service this in the conditions that I was in
25 ten minutes prior to closing and ten minutes after

1 closing the loan, by any evaluation.

2 Q. You could have gone out and gotten an
3 investor --

4 A. I couldn't at that point because I didn't have
5 any financial strength to offer anything to an investor.
6 I had a project that was sellable.

7 Q. Did you try to sell it?

8 A. I didn't the first year. I offered.

9 Q. You offered or you --

10 A. I didn't market it, I offered it to the people
11 that I pursued as investors.

12 Q. So you looked for investors, you didn't try to
13 sell the project?

14 A. But I did offer to the investors that they buy
15 it at the end of that -- within three months of the end
16 of the term.

17 Q. I understand that you think that there were
18 these recognized standards or there are these standards,
19 but you are not aware of any set standards like when you
20 build a house, there are some building codes that you
21 have to follow; correct?

22 A. I think very similar to my standards there are
23 those same standards in the building industry.

24 Q. I am asking you what those standards are.

25 A. I think the standards are that there needs to

1 borrowing money that you rely on to make that statement
2 that the bank deviated from recognized lending
3 standards?

4 A. No, I guess not. I mean I have had
5 conversations with other bank officials and gathered
6 that, yeah, that is a bad loan.

7 Q. You understand different lenders can have
8 different criteria and --

9 A. I don't think they do, I don't think they have
10 a lot of different criteria. I don't think there is a
11 lot of difference between any of the lenders.

12 Q. And that's just based again just on your
13 experience.

14 A. Right. On their requirements, Washington
15 Federal's, Bank of Commerce's, Bank of Idaho's,
16 Citizens', their requirements are all within tiny, tiny
17 differences.

18 Q. In Paragraph 15 you also allege that the bank
19 committed other wrongful conduct. What other wrongful
20 conduct do you believe that the bank committed?

21 A. I think that they should have considered one
22 of the other options in order to mitigate the loss of
23 the financing that was established and keep my balance
24 sheet more sound. And it wouldn't have hurt the bank at
25 all. It wouldn't have changed the bank's exposure or

1 be some established loan to value. There needs to be
2 some established capacity to perform on the debt service
3 requirement. There needs to be some exit strategy or
4 capacity to liquidate. There needs to be all of those
5 things in place, I think, for your industry to borrow
6 money. I think there is a difference between the
7 banking industry and cash and loan places, I think there
8 are different set standards.

9 Q. So your belief is that somehow those
10 standards, whatever they may be, weren't followed.

11 A. Sure.

12 Q. And then do you have any expertise in those
13 standards?

14 A. Just my own, the loans that I have taken out
15 in the past, listening to their evaluations, as to
16 whether the loan was acceptable or not or whether it was
17 a good loan or bad loan, whether the risk versus reward
18 were viable to justify lending money.

19 Q. But you don't have any expertise in those
20 standards other than just your personal experience in
21 borrowing --

22 A. Yes, but I would say they are substantial. My
23 personal experience is probably greater than most in
24 borrowing money, establishing lines of credit.

25 Q. Anything other than your experience in

1 risk or anything, it would have been fine, they could
2 have done a million things, twelve things differently to
3 maintain their own position and not affect mine so much.

4 Q. Other than follow one of your recommendations,
5 what other wrongful conduct did the bank engage in?

6 A. I think they changed the terms at the last
7 minute. I think they went through and closed a loan
8 they had no business closing, none whatsoever. I think
9 they did a lot of wrong things, yeah. I think the whole
10 process was wrong, there was nothing in writing, there
11 was nothing stipulating anything, there was nothing
12 stipulating my request to the board. It was just my
13 request, my binder. It's my binder.

14 Q. Is there something in your mind legally, can
15 you point me to something that says you can't do that?

16 A. No, but it seems so convenient and
17 hypocritical for you guys to be able to take any high
18 ground or comfort whatsoever in any misunderstanding
19 when you make no effort to clarify an understanding,
20 none whatsoever. My signature is not on one thing, you
21 know.

22 Q. You did sign the loan documents; correct?

23 A. Yes, but not on one thing that was applied,
24 nothing. A million, you have twelve things for sure,
25 that practice.

1 Q. So what are those twelve things?

2 A. I don't know how many I have just named.

3 Q. You said that you didn't sign anything.

4 A. They didn't have any clarification of
5 protocol, what I was asking and what I needed. They
6 didn't have any format of exchange between the applicant
7 and the bank or the bank to the applicant, no set
8 conditions or contingencies. I have seen far more in
9 depth real estate offers and purchases and sales; you
10 offered nothing, nothing.

11 Q. You would agree that this was in a pretty
12 condensed timeframe?

13 A. Very much so. But I don't think the protocol
14 would have cost one minute more of time. You still went
15 through the same steps. Had there been some sort of
16 protocol, I think that there could have been some
17 options maintained. So I think that, I think that the
18 bank is unwilling to look at its impact on me --

19 Q. That goes back to not going with one of your
20 options?

21 A. Or offering another one. It doesn't matter,
22 it doesn't have to be one of my options, just something
23 else. Just a ton of things, terrible. Approving the
24 loan the way they approved it.

25 Q. So you didn't like the approval that you got?

1 A. Are you kidding me? They gave me a \$2.2
2 million loan with sixty some thousand dollars of working
3 capital in the bank, liquid asset in the bank, and no
4 means of continuing the income that they used to approve
5 the loan? Yeah, there is some issues there, I think.

6 Q. Then you decided to go ahead with the loan.

7 A. Clearly, you can say it eight more times and I
8 am going to say yes every time.

9 Q. Good. In Paragraph 15 you allege that
10 Jefferson and other related entities lost the ability
11 to take advantage of the foreseeable prospective
12 economic opportunities related to the 80 Acres parcel,
13 the Southern Hill projects, and other real estate
14 developments.

15 A. And this one wasn't truly foreseen, like to
16 the extent that it impacted us, it wasn't foreseen or
17 foreseeable with my set of knowledge. It was truly
18 after we went out courting investors, them asking for
19 financial statements and them seeing our weaknesses and
20 defining our weaknesses as exactly what had just
21 changed.

22 Q. So you at the time, you didn't realize the
23 impact it potentially could have, you said you later
24 discovered --

25 A. I knew it would have an impact on my appeal to

1 investors. I didn't fully appreciate how to the extent.

2 Q. Do you believe that the downturn in the
3 economy had any effect on these things?

4 A. For sure, but not at that time. There was no
5 downturn in the market in the spring of 2006.

6 Q. In fact at that time things were going upward
7 and onward.

8 A. Yes, and it was definitely in my agenda to
9 establish an investor immediately and go like crazy. We
10 had I think on that 80 Acres, Inc., piece, Phase 1, 280
11 lots that were flat high density lots that were really
12 inexpensive to develop and the idea was we could
13 probably hit a break even point through those.

14 Q. At that point in time it was almost as if you
15 could get a piece of property and develop it, if you had
16 any development skill at all, you could turn a profit on
17 a project?

18 A. Yeah, because of the way we were positioned,
19 yes. We had competitive positions from the purchase of
20 land, design of land, put it through excavation,
21 development, construction, final product. Our
22 production costs, yeah, we had a fantastic competitive
23 advantage. And we were talking about servicing a market
24 that really wasn't being serviced in Pocatello that
25 would have extended far beyond where the rest of the

1 market ended. We wanted to build \$180,000 houses as you
2 have in your packet.

3 Q. And those were some of the factors, again,
4 that would lead you to think that even though I might
5 not like the offer, loan offer, that the Bank of
6 Commerce has given me, I think there is enough to go
7 forward because we hope all of these things happen?

8 A. I don't know if I thought that, I don't think
9 that's fair. I think that's kind of putting words into
10 my mouth. I don't know what I thought at that point.
11 It threw a stick in the spoke, threw us. I think at
12 that point it really was different, it was regroup,
13 regain, re-establish a game plan, maintain the equity
14 that you just spent a million dollars and two years of
15 your life building.

16 Q. How did you calculate the damages that you
17 think that you suffered as a result of the bank's
18 conduct?

19 A. I don't know. This got me in trouble on the
20 last one, too, I don't know what my damages are. I
21 don't know what my damages are. I know what my damages
22 are in principle. I don't know the amounts of them yet
23 because I am not that comfortable with the
24 reconciliation.

25 I have in my mind that we would have hit a

1 break even point and it would have taken the pressure
2 off by 2009 and we could have at that point been
3 Satterfields and just provided lots as the market
4 demanded. The project is worth \$60 million, it's a
5 thousand lots. I don't know over what timeframe.

6 That's the variable that you really -- I want
7 you to hear me say, that's why I haven't defined a
8 number on that. I think you need somebody a little bit
9 smarter than me to define that number, but I can tell
10 you in principle where the damages came from.

11 Q. That was where?

12 A. From just standing in the way of this
13 project's success.

14 Q. Can you think of anything else?

15 A. Yeah, it was lost revenue in lot sales, it was
16 lost revenue in construction, excavation. Had this set
17 of equipment that we owed less than \$200,000 on that we
18 bought for seven hundred and some thousand dollars that
19 now was now sitting, weeds growing around it.

20 Q. Did the downturn in the economy have anything
21 to do with that?

22 A. I think it does have an influence. But that's
23 what I'm saying, I don't know what that number is after
24 the downturn in the economy, but it's certainly plus
25 something. The value is still something. Maybe it

1 paranoid or conspiracy theorist, but it is hard to
2 ignore that there could be some inherent benefit to the
3 Bank of Commerce recovering that piece of property under
4 those terms.

5 Q. What do you think the inherent benefits to the
6 Bank of Commerce would be?

7 A. Well, I think it could become an asset to
8 another client that has got the capacity to bring more
9 money to the bank. And it also has a value to a
10 potential client that you don't have that has a lot more
11 financial strength than I do. Like you said, I am not
12 saying that I have any evidence, there is nothing in
13 writing, I'm not -- I am just saying that, yeah, there
14 could be some motivation for the bank getting this piece
15 of property back under those terms.

16 Q. But do you believe that that was the motive
17 that drove this supposed change as you call it?

18 A. I don't know for sure, but, no, my gut and my
19 instinct is that it was just simple negligence, the left
20 hand didn't know what the right hand was doing, and that
21 Tom's arrogance wouldn't consider something that would
22 mitigate its impact on me. It was absolute negligence
23 at least.

24 Q. You don't feel like Steve Worton was
25 purposely trying to mislead you --

1 wasn't what I projected it to be in 2006 or 2005 or
2 2004, but it still has some value there.

3 Q. We have talked about the lack of writing. You
4 don't have any written documents from the Bank of
5 Commerce on any of these commitments that --

6 A. Brian, how many times have you asked me that?

7 Q. I don't know.

8 A. At least five; right? Maybe six. There is
9 nothing in writing. There wasn't even a final approval
10 in writing.

11 Q. In Paragraph 19 of your counterclaim you state
12 that the change of position of the bank, and this is
13 talking about the change in 80 Acres financing, was
14 timed in such a manner that Jefferson was unable to seek
15 alternate financing to exercise the option to purchase
16 the Wood property.

17 Is it your position that the bank purposely
18 misled you, kind of led you along to that point and then
19 kind of hit you below the belt?

20 A. I haven't said that and you didn't read that
21 in that Paragraph 19, that is a presumption you just
22 jumped on.

23 Q. No, I am just asking --

24 A. I would say minimum negligently and I don't
25 know, I don't know, you know. I don't fancy myself a

1 A. I don't think Steve Worton misled me. I think
2 Steve Worton came in here today and absolutely said 20
3 things that were not off but were totally untrue. Now,
4 whether that's because he doesn't remember or whether
5 it's because he signed some hold harmless thing with the
6 Bank of Commerce, I don't know, it doesn't matter to me.
7 I know what happened with Steve. I think Steve was
8 forthright, I think Steve was as frantic as I was those
9 two days before to clarify with Tom the board's
10 intention.

11 Q. You are saying it wasn't purposeful, you don't
12 think it was --

13 A. I'm not saying it wasn't purposeful. I am
14 saying I don't think that it was but I don't know. I
15 want that answer to be enough.

16 Q. But you don't have any facts that would
17 support a belief that you can point to that caused you
18 to say this was purposeful because of this?

19 A. That's right.

20 Q. That might be your suspicion but --

21 A. I could say it could have been purposeful at
22 the benefit to Bank of Commerce because of this, doesn't
23 mean that was your intent.

24 Q. That's what I'm saying, you don't have --

25 A. Nothing in writing.

1 Q. That's not what I'm asking. You don't have
2 any, you are not aware of some facts, you haven't heard
3 from somebody that the bank was trying to get this
4 property from you for the benefit of some other
5 customer?

6 A. No facts. I think I mentioned to Mike one
7 time that his mortgage department lady or something had
8 expressed that this land was going into foreclosure at
9 the time I was trying to liquidate it and was speaking
10 with Allen Ball and a few Idaho Falls money people. It
11 was out on the street that the land was going into
12 foreclosure prior to going into foreclosure because of
13 the Bank of Commerce, because of a lady at the mortgage
14 place. And I think I gave you her name and I think you
15 guys did due diligence in exploring whether there was
16 any truth to it or not. And I kind of let it die, too,
17 I don't really think there is any point in pursuing it
18 either. It was legitimate, it came from someone who
19 only could have heard it from her.

20 Q. But that was way past closing the loan.

21 A. Yes, way past closing the loan.

22 Q. I am talking about things that happened before
23 the loan closed that made you think that they were --

24 A. I think that Tom didn't want the loan to go
25 through. I think that Tom called my bluff. I think

1 I said that's what I think that Tom's
2 intention was. I didn't act on behalf of that
3 whatsoever. I acted exactly as I told you I acted. I
4 acted on behalf of mitigating the loss to me the best I
5 could. I took the least of the evils, whatever. This
6 one would cost me less than this one would. And that's
7 how I acted and I was in a panic.

8 I don't know if I made the best choice or not,
9 I regret it some days and some days I think -- you guys
10 were horrible. I don't know, it's definitely wrecked my
11 life, it definitely has had an impact. I don't think
12 it's solely due to the Bank of Commerce either, I think
13 the market itself, the downturn in the market. Bank
14 policy on spec construction and lending. Our own
15 construction practices. A million things have played
16 into it.

17 But as it pertains to my life, yes, you guys
18 affected my life in an astronomically huge way by taking
19 my working capital away when I needed it the most. And
20 I think you guys solely provided those two options for
21 me to choose from. I didn't want those as choices, I
22 didn't ask for those as choices. You guys provided
23 those as my choices, and you did it 48 hours before I
24 was going to lose this project that I had everything
25 invested in. And you did it ugly, it was ugly.

1 that Tom didn't think that I'd perform. So I don't
2 think that Tom went in there and re-evaluated it based
3 on new numbers, based on my new financial situation
4 after paying this piece of land off. I think he called
5 my bluff. I truly believe that. I think he did it
6 negligently, I think it was dishonest, I think it was
7 shitty.

8 Q. So was this a power struggle between you and
9 Tom --

10 A. A little bit, but it wasn't between me and
11 Tom, it was between Tom and his board, who voted
12 unanimously in favor of this project.

13 Q. You said Tom, you didn't think Tom would call
14 your bluff.

15 A. I think that Tom called my bluff is what I
16 just said.

17 Q. So he didn't think you would ever close --

18 A. That's right.

19 Q. And you were going to show him that you were
20 going --

21 A. No. You just put those words into my mouth,
22 Brian, that was an absolute ridiculous effort to
23 manipulate what I just said. It was sickening, don't do
24 it anymore. I didn't say anything remotely close to
25 that.

1 And I think if you ask the board of directors,
2 they would all probably tell you Tom was not in favor of
3 this project from the start. They would also probably
4 tell you that we voted unanimously in favor of the
5 project.

6 Q. Was Tom one of the voting members --

7 A. I don't think he was, I don't know that. But
8 I don't think at the time he was. Do you know?

9 Q. Those are again your suspicions.

10 A. Do you know if Tom was at the time?

11 Q. I do, but we are here for your deposition, not
12 mine.

13 A. But your clarification of that point may help.

14 Q. During your discussions with Steve Worton, did
15 you understand that Steve Worton didn't have authority
16 by himself to approve this loan?

17 A. I felt that he did.

18 Q. What was it that led you to believe that he --

19 A. I'm sorry, strike that, that's not right. I
20 felt he had the authority to represent the bank. In
21 fact I somewhat knew that. Whether that was right or
22 wrong, I don't know, but I knew at that point that Steve
23 had the authority to represent the bank.

24 Q. But you knew he had to go get approval from
25 the board of directors on a loan of this size.

1 A. Yes.

2 Q. And, to your knowledge, does the bank's
3 insistence that it have a first lien on the 80 Acres, is
4 that somehow a violation of any statute that you are
5 aware of?

6 A. No.

7 Q. Is it a violation of any regulation or rule
8 that you are aware of?

9 A. I think like you said, they can ask for
10 whatever they want. They can ask for my first born, I
11 guess, if they want.

12 Q. Would you agree that by requiring a first
13 position on the 80 Acres property, that that would
14 minimize the exposure to the Bank of Commerce?

15 A. No, no. In fact I think it created exposure
16 to the bank.

17 MR. LARSON: Can I break right here for a
18 minute.

19 (Discussion off the record.)

20 Q. (By Mr. Tucker.) So you don't know why the
21 bank wanted the 80 Acres parcel as first lien
22 collateral, do you?

23 A. I think that they felt like -- I think that
24 Tom felt like it would strengthen his position and
25 decrease his exposure. I think in this situation,

1 the bank would take a second position on the 80 Acres,
2 is that right, the 80 Acres, Inc., property?

3 A. I believe that I explained that to Steve
4 perfectly clear, I believe that that was spelled out in
5 my application, I believe that Steve understood that was
6 the way the loan was proposed, and I believe that's how
7 Steve presented it. And I believe that when Steve gave
8 me his representation of the bank's preliminary
9 approval, I believe that it was not a change to my
10 application stipulated anywhere, as the other changes
11 were stipulated. I believe that it was a surprise to
12 Steve that Tom expressed some sense that it was supposed
13 to be or intended or represented to offer that first
14 position.

15 Q. You have heard Steve say that --

16 A. I did, I heard it loud and clear.

17 Q. -- that he thought it was going to be
18 subordinated.

19 A. I did.

20 Q. Do you think he is just mistaken?

21 A. I don't know. I know that that was not his
22 understanding when we were across the table from each
23 other for endless hours in 2006, the spring of 2006. I
24 believe that it was represented that the balance of
25 value, whether that be second position or whatever, be

1 though, there was 15 things he could have done to gain
2 that same advantage without costing me that, what he
3 did.

4 Q. In part of your counterclaim is that the bank
5 interfered with your prospective economic advantage.

6 A. Yes.

7 Q. Is that the prospective economic advantage of
8 Jefferson Enterprises moving forward on this project?

9 A. In every way, yes. It affected my ability to
10 earn, my ability to borrow, my ability to borrow at more
11 appealing terms, more competitive terms, from my
12 production, construction. It affected my appeal to
13 other investors, my ability to court investors, what I
14 have to offer investors, my financial strength.

15 Q. Again, it affected Jefferson Enterprises, not
16 all the details but --

17 A. But all of those details affected the success
18 of Southern Hills, which was an asset of Jefferson
19 Enterprises, yes.

20 Q. So that's what you are referring to when you
21 are referring to interfered with the prospective
22 economic advantage.

23 A. Sure; disabled.

24 Q. As I understand it, it's your position that
25 Steve Worton -- you believe Steve Worton told you that

1 subordinated to the bank from me.

2 Q. Say that again.

3 A. The balance of value or the balance of equity,
4 whether that be a second position or not, whatever that
5 value was, could be a guarantee, it could be whatever,
6 would be subordinated by me, from me to the Bank of
7 Commerce. But nothing would ever be subordinated by 80
8 Acres, Inc., never represented, never implied. In fact
9 quite the opposite on this (indicating), that he said
10 was the first page of my loan request.

11 Q. But you understand his loan presentation
12 indicated that it be a first deed of trust on 385 acres?

13 A. I never saw it so I have no idea.

14 Q. But you understand that now after looking at
15 the documents that's what he --

16 A. Not necessarily.

17 MR. LARSON: Objection, it does call for
18 speculation. And I move to strike the answer.

19 Q. Your complaint or counterclaim talks about the
20 bank changed its position. Did you think it changed its
21 position -- when they made these representations that
22 you believe they made to you, that they would be in a
23 second position, do you believe that they intended to
24 change them later on at that time or is that something
25 that happened after the fact?

1 A. After what fact?

2 Q. After these supposed representations, again
3 you go back to that March 25 date --

4 A. April 25.

5 Q. Excuse me, April 25 date --

6 A. You keep going back to that date.

7 Q. That's the date you gave so that's why I go
8 back to it.

9 A. No, I didn't give you that date.

10 Q. I understand that you don't know for sure but
11 that was just a date that you picked. You said you
12 picked it out of the air so it's just a date I use to
13 bring us back to this precommitment that you talked
14 about.

15 A. But understand that that date is just sometime
16 before.

17 Q. I do, I apologize if I haven't acknowledged
18 that before. But is it your belief that when they
19 supposedly gave you this precommitment that they knew at
20 that time that they were later going to change their
21 position?

22 A. No, I don't think. And you keep saying
23 "they," understand the only contact was Steve until the
24 day before the loan and then that was Steve and Tom. So
25 "they" being Steve, no, I don't think that he had any

1 Q. Do you have a copy of your divorce settlement
2 that details the division of these entities that we have
3 talked about?

4 A. Somewhere. It's simply this: An assignment
5 of all rights, to all assets and liabilities, in
6 interests of all the entities; it's an assignment of all
7 of that, there is deed in lieu, whatever, quitclaim
8 deeds on everything.

9 MR. LARSON: The settlement agreement is a
10 matter of public record. We can supply you with a copy
11 of it.

12 Q. I don't want to spend a lot of time on this,
13 but I want to go through a few of these documents that
14 are attached to our complaint, and I won't make this an
15 exhibit, I don't think, but I am going to walk through
16 these.

17 Exhibit A to our complaint filed in this
18 matter is a promissory note for the \$2,223,805, Exhibit
19 A to the complaint. Do you remember signing that
20 document?

21 A. Yes.

22 Q. And is that your signature on that document?

23 A. Yes.

24 Q. And you would acknowledge that you received
25 those loan proceeds, the 2 million, the amount that's

1 intention of changing the game at the last minute.

2 Q. What was Sonya Morrison's involvement with the
3 loan with the Bank of Commerce?

4 A. None.

5 Q. Did she have any communications to your
6 knowledge with anyone from the Bank of Commerce
7 regarding the loan?

8 A. She might have with Steve that day before but
9 it would have been in conference type setting with me.
10 And she did go to closing with me with a bag full of
11 money and checks on the day of closing and signed the
12 closing docs. She did help me round up that money that
13 day. She was extremely involved with those two days.
14 She was sitting next to me during my conversations with
15 Steve. So, yes, she was sitting next to me at 6:30 in
16 the morning when I was talking to Steve, and she was
17 sitting next to me at 7:30 that night talking to Steve.

18 Q. So she was present when you spoke with Steve.

19 A. Yes.

20 Q. Other than that, to your knowledge, did she
21 have any involvement with the loan?

22 A. No.

23 Q. Were you the one primarily responsible for the
24 loan with the Bank of Commerce?

25 A. Yes.

1 set forth there?

2 A. Yes, or something close to it, yes.

3 Q. Let's look at Exhibit B --

4 MR. LARSON: Did we deny any of those things
5 in our answers?

6 MR. TUCKER: I don't remember if you did.

7 MR. LARSON: I don't believe we did. Go
8 ahead.

9 Q. (By Mr. Tucker.) The same thing with Exhibit
10 B. This is a note for the 400,000 a year later. The
11 second page of that -- the third page of that is a
12 signature of Dustin Morrison. Do you recall signing
13 that document?

14 A. I don't recall it but I don't doubt it. Can
15 that be okay? I don't doubt that I signed it for sure
16 and that this was capitalization of interest for the
17 past year in order to extend the loan for another I
18 think six months or something like that.

19 Q. Let's look at Exhibit C. That's a mortgage on
20 this property. Again, Page 7 of that has your signature
21 on it. Do you recall signing the mortgage for the
22 Southern Hills property?

23 A. I probably don't but I have no doubt and I
24 will totally just stipulate that I did, I am fine with
25 that.

1 Q. Exhibit D, the same thing, it's another
2 mortgage at the time of the \$400,000 loan. Any reason
3 to doubt that you signed that?
4 A. None whatsoever.
5 Q. Exhibit E is an extension agreement or a
6 modification to the deed of trust terms, looks like
7 another \$20,000 --
8 MR. LARSON: Deed of trust?
9 MR. LARSON: Mortgage or deed of trust.
10 Q. Again, does that have your signature on it?
11 A. Yes.
12 Q. And the same thing with F, is a personal
13 guaranty that you signed, do you recall signing that?
14 A. I don't.
15 Q. At least do you acknowledge that you did sign
16 a personal guaranty?
17 A. I am good with stipulating that.
18 Q. The same thing with -- there is actually two
19 guarantees there, one for the two million plus loan and
20 and one for the 400,000 loan.
21 A. Yes.
22 Q. You agree or are aware that you personally
23 guaranteed --
24 A. Don't doubt that at all.
25 Q. If you would turn to Page 4 of the complaint,

1 what. Is that what you are talking about?
2 Q. Yes.
3 A. I don't know. I think we have claimed a few
4 things.
5 Q. But other than what we have talked about what
6 those claims are, correct, are there other claims we
7 haven't talked about, other things that you think the
8 bank did wrong?
9 A. I am sure there are. I can't think of them
10 right offhand, though.
11 Q. Anything other than that that's set forth in
12 your amended counterclaim?
13 A. No.
14 MR. TUCKER: Let's go off the record.
15 (Discussion off the record.)
16 MR. TUCKER: Back on the record.
17 Q. (By Mr. Tucker.) Just a couple of quick
18 things. I am going to show you a letter from D.L. Evans
19 Bank dated April 24, 2006. Does that letter provide
20 some context as to when your dealings with D.L. Evans
21 may have come to a conclusion?
22 A. Now, say that one more time. Here we go. Say
23 that one more time.
24 (Record read.)
25 A. I think that the dealings with D.L. Evans came

1 there is a summary of at least what is alleged to be
2 owing and that was as of sometime in 2008, so there is
3 interest that's accrued since. Is there any reason to
4 dispute the amount that is listed there as owing?
5 MR. LARSON: I object on the basis of what's
6 owing --
7 Q. As far as the loan proceeds that you would
8 have received from the Bank of Commerce.
9 A. Do I stipulate that this is a sum of the 2.2
10 plus million dollar initial loan plus \$400,000
11 capitalization of interest loan plus a per diem interest
12 after that point, I have no doubt.
13 Q. You would acknowledge that you haven't repaid
14 those sums; correct?
15 A. Yes, that's correct.
16 Q. Any other claims that you have against the
17 Bank of Commerce other than those that we have discussed
18 today?
19 A. What ones did we discuss today?
20 Q. The ones we have been talking about for a long
21 time.
22 A. The claims of what I felt like they did wrong,
23 is that what you are saying?
24 Q. Yes.
25 A. I don't know if those are formal claims or

1 to a conclusion when I felt like I had some sort of
2 perspective on where we were going with the Bank of
3 Commerce. So then I went to the D.L. Evans Bank to get
4 pay-offs to get all of that kind of stuff to actually
5 fill in hard number lines with the Bank of Commerce.
6 Q. This letter talks about a letter dated April
7 13 that detailed their areas of concern that they had
8 with the project.
9 A. Sure.
10 Q. So as of April 13, 2006, they had at least
11 told you that they were not going to approve the request
12 as you had requested?
13 A. No, that's not true. That was a supplemental
14 request on April 13.
15 Q. What was the supplemental request?
16 A. Request for supplement of information on the
17 concerns that they had.
18 Q. And it talks about they were impressed with
19 the meeting they had with you in February, so you had
20 been working with D.L. Evans at least from February to
21 April of 2006.
22 A. No. I told you all of this, Brian, it's like
23 we were in a different room. I was working with D.L.
24 Evans since August.
25 Q. August of 2005.

1 A. Yes, and I got a loan from D.L. Evans --
 2 Q. But weren't you working with them specifically
 3 on the Wood project?
 4 A. All of it, from day one.
 5 Q. So clear back then.
 6 A. Yes.
 7 Q. So that whole period of time --
 8 A. And they were in, you know, contingent on
 9 things checking out, maintaining the five C's, you know,
 10 all of that, contingent on that, everything. When final
 11 numbers, when final approvals were in, then they could
 12 be finally valued based on final entitlements and costs
 13 and obligations.
 14 Q. And I guess what I was trying to give context
 15 to is at the very beginning I think of the deposition
 16 you said you weren't sure when, you knew what Steve and
 17 Pam had talked about as far as when you met with them,
 18 and I thought you said it was sometime after the D.L.
 19 Evans had told you that they weren't --
 20 A. No, I think I told you exactly that sometime
 21 after the January final approval, we submitted a formal
 22 request for \$2.8 million which was the package that you
 23 received as the Bank of Commerce. That same package was
 24 submitted shortly after the January 2006 meeting.
 25 That's what I told you.

1 And shortly after that there was a denial of
 2 2.8 and a preliminary approval of \$2.2 million. And the
 3 difference was verbally we don't want to pay you
 4 anything back. Which essentially became Bank of
 5 Commerce's exact same comment and policy and it was
 6 acceptable. But when it was D.L. Evans, then -- so in
 7 February we have a meeting and they say we love the
 8 project, we want to be involved with this project. We
 9 really don't want to give you cash back, we want to keep
 10 the skin in the game, that was their term.
 11 So I didn't say, no, that's unacceptable to
 12 me. I didn't say anything. I said thank you, and I
 13 left. And I contacted Pam, who had been courting me for
 14 three months at that time, maybe two months, maybe two
 15 months. And I said what do you have that's better, and
 16 she set up a meeting with Steve and I. And I believe it
 17 was before the 21st of April but I'm not sure, and it's
 18 okay if it was the 21st, I am okay with that, too.
 19 But we met and Steve said I think we can get
 20 you what you want, after maybe a two and a half hour
 21 meeting of going through it and going through it and
 22 going through it and going through it. And then after
 23 that we had several meetings continuing to go through it
 24 and go through it before Steve felt like he had his
 25 presentation.

1 Q. Had enough to present.
 2 A. So that's the order that it went in. There
 3 was no fill in the blanks. That's an absolute complete
 4 picture. There is not a denial in there I am leaving
 5 out --
 6 Q. I am not suggesting there was. I was
 7 wondering whether this gave you any context as to when
 8 those time frames were. That you --
 9 A. I feel like I had a good context. I feel like
 10 I have a good context. It would surprise me more that
 11 April 21 was our first meeting than it would March 30
 12 our first meeting. But both are possible.
 13 MR. TUCKER: That's all I have.
 14 MR. LARSON: We have no questions.
 15 (Witness excused at 3:40 p.m.)
 16 (Signature requested.)
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 CERTIFICATE OF DUSTIN REED MORRISON
 2
 3 I, DUSTIN REED MORRISON, being first duly sworn,
 4 depose and say: That I am the witness named in the
 5 foregoing deposition; that I have read said deposition
 6 and know the contents thereof; that the questions
 7 contained therein were propounded to me; and that the
 8 answers therein contained are true and correct, except
 9 for any changes that I may have listed on the Change
 10 Sheet attached hereto.
 11 DATED this ____ day of _____, ____.
 12 CHANGES ON ERRATA SHEET YES ____ NO ____
 13
 14
 15 DUSTIN REED MORRISON
 16 SUBSCRIBED AND SWORN to before me this ____ day
 17 of _____, ____.
 18
 19
 20 NAME OF NOTARY PUBLIC
 21 NOTARY PUBLIC FOR _____
 22 RESIDING AT _____
 23 MY COMMISSION EXPIRES _____
 24
 25

1 CHANGE SHEET FOR DUSTIN REED MORRISON

2 PAGE__ LINE__ REASON FOR CHANGE _____

3 READS _____

4 SHOULD READ _____

5 PAGE__ LINE__ REASON FOR CHANGE _____

6 READS _____

7 SHOULD READ _____

8 PAGE__ LINE__ REASON FOR CHANGE _____

9 READS _____

10 SHOULD READ _____

11 PAGE__ LINE__ REASON FOR CHANGE _____

12 READS _____

13 SHOULD READ _____

14 PAGE__ LINE__ REASON FOR CHANGE _____

15 READS _____

16 SHOULD READ _____

17 PAGE__ LINE__ REASON FOR CHANGE _____

18 READS _____

19 SHOULD READ _____

20 PAGE__ LINE__ REASON FOR CHANGE _____

21 READS _____

22 SHOULD READ _____

23

24 DEPONENT SIGNATURE: _____

25

1 REPORTER'S CERTIFICATE

2 I, PAUL D. BUCHANAN, CSR NO. 7, Certified

3 Shorthand Reporter for the State of Idaho, certify:

4 That the foregoing proceedings were taken before

5 me at the time and place therein set forth, at which

6 time the witness was put under oath by me;

7 That the testimony and all objections made were

8 recorded stenographically by me and were thereafter

9 transcribed by me, or under my direction;

10 That the foregoing is true and correct record of

11 all testimony given, to the best of my ability;

12 I further certify that I am not a relative or

13 employee of any attorney or party, nor am I financially

14 interested in the action.

15 IN WITNESS WHEREOF, I set my hand and seal this

16 7th day of November, 2011.

17

18

19 *Paul D. Buchanan*

20

21 PAUL D. BUCHANAN, CSR, RPR, RMR

22 Notary Public

23 P.O. Box 2636

24 Boise, Idaho 83701-2636

25 My Commission expires: June 20, 2016

DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

THE BANK OF COMMERCE, an)
Idaho banking corporation,)
Plaintiff,)
vs.) Case No.
JEFFERSON ENTERPRISES, LLC,) CV 08-4231 OC
an Idaho limited liability)
company, DUSTIN MORRISON)
and SONYA KIDD aka SONYA)
MORRISON, THE CITY OF)

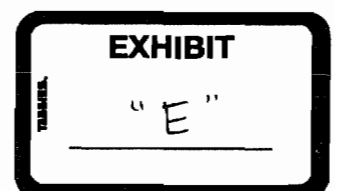
(Caption continued.)

ORAL DEPOSITION OF SONYA J. MORRISON

Taken on November 4, 2011

REPORTED BY:

PAUL D. BUCHANAN, RPR, RMR,
CSR No. 7, and Notary Public



1 Pocatello, an Idaho)
 2 municipality,)
 3 Defendants.)
 4)
 5 DUSTIN MORRISON and SONYA KIDD)
 6 aka SONYA MORRISON, and)
 7 JEFFERSON ENTERPRISES, LLC,)
 8 an Idaho limited liability)
 9 company,)
 10 Counterclaimants,)
 11 vs.)
 12 THE BANK OF COMMERCE, an Idaho)
 13 banking corporation,)
 14 Counterdefendant.)
 15)
 16
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I N D E X

1
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 3 Examination By: Page
 4
 5 Mr. Tucker 5
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 7 No Exhibits Marked
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1 APPEARANCES:
 2
 3 For the Plaintiff:
 4 BRIAN T. TUCKER
 5 Nelson Hall Parry Tucker
 6 Attorneys at Law
 7 P. O. Box 51630
 8 Idaho Falls, Idaho
 9
 10 For the Defendants Jefferson Enterprises, LLC,:
 11 A. BRUCE LARSON
 12 ABLE Law, PC
 13 Attorney at Law
 14 155 South Second
 15 Pocatello, Idaho
 16
 17 Also Present:
 18 Dustin Morrison
 19 Mike Morrison
 20
 21
 22
 23
 24
 25

1 BE IT REMEMBERED that on November 4, 2011, at
 2 the hour of 3:45 p.m. the deposition of SONYA J.
 3 MORRISON, produced as a witness at the instance of the
 4 plaintiff in the above-entitled action now pending in
 5 the above-named court, was taken before Paul D.
 6 Buchanan, CSR #7, and notary public, State of Idaho, in
 7 the law offices of ABLE Law PC, 155 South Second Avenue,
 8 Pocatello, Bannock County, Idaho.
 9

10 WHEREUPON, the following proceedings were had:
 11

12 SONYA J. MORRISON,
 13 called at the instance of the plaintiff, having been
 14 first duly sworn, was examined and testified as follows:
 15

EXAMINATION

16 BY MR. TUCKER:

17 Q. Would you state your name for the record.

18 A. Sonya Jo Morrison.

19 Q. Ms. Morrison, have you had your deposition
 20 taken before?

21 A. Yes.

22 Q. How many different times?

23 A. One, I think just one.

24 Q. And in what matter was that matter taken?

25 A. It was in a real estate deposition.

1 Q. That Bridger --

2 A. Yes.

3 Q. You say you knew some of the ground rules. I
4 am going to ask you some questions and we need you to
5 answer audibly.

6 A. Okay.

7 Q. And if you would wait until I finish asking
8 the question before you answer, that will help with the
9 transcription. Does that make sense?

10 A. Yes.

11 Q. Instead of saying uh-huh or huh-huh or nodding
12 your head, try to make sure we say yes or no.

13 A. Okay.

14 Q. You are familiar with Jefferson Enterprises,
15 LLC?

16 A. Yes.

17 Q. Are you familiar with the loan that Jefferson
18 Enterprises, LLC, obtained from the Bank of Commerce?

19 A. Yes, I know that there is a loan from the Bank
20 of Commerce.

21 Q. And was that in the Southern Hills property
22 and all the entities, was that resolved as part of your
23 divorce, the ownership of those entities?

24 A. Yes.

25 Q. Who owns those entities now, from your

1 understand the loan at the time. I don't know, maybe I
2 don't know the allegations, I guess.

3 Q. Have you looked through the counterclaim?

4 A. No, I haven't.

5 Q. You mentioned that you didn't fully understand
6 the loan. Is that your understanding of what the
7 counterclaim involves, is that you didn't understand
8 what you were getting into when you signed the
9 agreement?

10 A. Well, I am not saying that is the counterclaim
11 because I haven't read it. But at the time -- the part
12 that I was involved in -- which this was a super long
13 time ago, too, you have to remember -- I know it changed
14 rapidly. Like as we were dealing with the loan officer,
15 there is a lot of things that changed. We had to make
16 decisions really quickly. That's what I remember about
17 at the time. So I guess maybe I shouldn't have said
18 that I understand the counterclaim because maybe I
19 don't.

20 Q. What I should ask you is did you have any
21 personal dealings with Steve Worton at the Bank of
22 Commerce?

23 A. Yes.

24 Q. What were those dealings?

25 A. The one that I remember the most is that he

1 standpoint?

2 A. Dustin does.

3 Q. So do you have any interest in those entities?
4 When I say those entities, I am talking about Jefferson
5 Enterprises, American Dream Home Builders, American
6 Dream Construction, Southern Hills development, those
7 entities, do you have any interest in those entities?

8 A. No, I don't believe I do.

9 Q. And who do you understand owns those entities?

10 A. Dustin.

11 Q. Does he own the assets associated with those
12 entities?

13 A. Yes.

14 Q. Are you familiar with the counterclaim that
15 was filed on your behalf in the action with the Bank of
16 Commerce?

17 A. I know a little bit, probably just the basics.
18 I haven't been really, really involved with that.

19 Q. Do you know what the allegations are against
20 the Bank of Commerce that are being made by you?

21 A. Just the basics.

22 Q. What do you understand those to be?

23 A. Well, just that the loan that was given to us
24 at the time, it was not given to us probably -- I don't
25 know how to word it. I think that we didn't fully

1 called me and Dustin, and I thought we were supposed to
2 come up with a fairly small amount of money. And I
3 believe it was the morning or the evening before we had
4 to sign on the loan we had to I think come up with
5 \$376,000. And it was come up with it like that
6 (snapping fingers). And that's what I remember most
7 about Steve Worton, because Dustin and I were both
8 surprised, we weren't planning on having to come up with
9 that much money.

10 Q. So this would have been right before the loan
11 closed?

12 A. Yes.

13 Q. And Steve Worton called and talked with you
14 about that?

15 A. Yes.

16 Q. Do you know when that was, what time of day?

17 A. I don't. I couldn't even tell you if it
18 was -- I want to honestly say it was the day before but
19 it could have been two days before, I don't remember. I
20 would say it was probably in the afternoon.

21 Q. And other than the fact that you may have had
22 to come up with \$376,000, anything else specifically
23 that you recall about that conversation?

24 A. No, that's what I remember, because it was a
25 shock.

1 Q. And did you talk with Steve Worton quite a bit
2 at that time?

3 A. I had that conversation with him and then the
4 next, if it was the next day that we closed, we met him
5 probably an hour before we closed at the First American
6 Title building and we spoke with him prior to actually
7 signing as well.

8 Q. What were the substance of those
9 conversations?

10 A. I don't remember. I remember him saying,
11 asking us if we were going to be okay coming up with
12 that much money, but that's really, I don't really
13 remember anything that stands out other than --

14 Q. So at that point you were still, I mean you
15 were planning on going ahead with the loan, but that was
16 a decision that you and Dustin were making at that time;
17 is that correct?

18 A. Yes, we were trying to figure out a way to
19 come up with that much money, yes.

20 Q. And eventually you decided to -- or you were
21 able to and you actually decided to go ahead with the
22 loan?

23 A. Yes.

24 Q. Any other conversations that you had, that you
25 recall with Steve Worton?

1 A. I believe I had to call him a couple of times
2 out at the American Falls office, I think just for
3 paperwork. But I don't remember any significant
4 conversation other than just needing some paperwork I
5 believe for our accountant. I really don't remember
6 when that was or anything.

7 Q. Would that have been after the loan had
8 closed?

9 A. Yes.

10 Q. Any other conversations that you had with
11 anyone at the Bank of Commerce relative to this loan
12 with Jefferson Enterprises and the Bank of Commerce?

13 A. No. I know that Mike Morrison had came to our
14 office but he and I mostly had small talk, it wasn't
15 really anything about the loan or anything.

16 Q. And that would have been after the loan had
17 closed.

18 A. Yes.

19 Q. Was Dustin primarily responsible for dealing
20 with the bank and negotiating with the bank and talking
21 with the bank about this particular loan?

22 A. Yes, absolutely.

23 Q. Do you have any notes or other documents
24 regarding the obtaining of this loan or anything related
25 to this loan at the Bank of Commerce?

1 A. Not that I can think of. I would have files
2 that would have paperwork. Do you mean handwritten
3 notes by myself --

4 Q. Notes you would have kept regarding
5 conversations you had or --

6 A. No, I didn't keep any notes.

7 Q. Does Dustin keep any of those type of records?

8 A. Not that I have seen at the house or in our
9 files. It's possible but I'm not aware of that.

10 Q. Do you remember discussions about requesting a
11 subordination -- do you know what the 80 Acres, Inc.,
12 property is?

13 A. Yes, is it Ashley Lyman?

14 Q. Correct.

15 A. Yes.

16 Q. Were you involved with that at all?

17 A. Not a lot but I did make a couple of phone
18 calls to Ashly just to get his -- I think that I
19 e-mailed him. I can't remember for sure, but we had to
20 get some type of documentation from him and I believe
21 that I called him either to get his e-mail or an address
22 or something to send him something.

23 Q. When would that have been, before the loan
24 closed?

25 A. I believe so.

1 Q. And what were you obtaining from him?

2 A. I can't -- I think it was a signature or
3 something. But I honestly don't remember. I know that
4 I had to get something from him or something to him, but
5 I don't recall what it was.

6 Q. And do you recall, is this a week before the
7 closing, the day before the closing, a month before the
8 closing?

9 A. I don't recall; I would hate to say because I
10 honestly don't recall.

11 Q. When you said you were surprised by having to
12 come up with those funds, what was it that you were
13 expecting?

14 A. I want to say that Dustin and I originally
15 thought that we had to come up with I want to say 20 or
16 \$25,000, and my memory isn't super clear, but I know at
17 the last minute we had to really scramble to come up
18 with that much money and I remember it being right
19 before closing, like there was no time to decide, it was
20 a very -- you know, it was quick. And I think that's
21 probably why it sticks out in my mind so much.

22 Q. And do you recall anything or do you know
23 anything about having to come up with those funds
24 because of not being able to get a subordination with
25 the 80 Acres, Inc., loan?

1 A. No, I don't recall why we had to come up with
2 that much money. I thought we did get that from them,
3 but I could be wrong. Dustin really was the one that
4 handled it and so it was more of a discussion between
5 him and I, what to do type thing.

6 Q. When you say you thought you got that, you
7 thought you got the subordination from the 80 --

8 A. I am not saying that I thought that then, but
9 I am saying right now I thought that we had got that.

10 Q. Do you remember signing loan documents with
11 the Bank of Commerce?

12 A. Yes.

13 Q. And you don't dispute that the Bank of
14 Commerce actually did loan you the moneys that are set
15 forth -- have you looked at the complaint, the amounts
16 that were loaned to you recently?

17 A. No, I can't say that I have.

18 Q. I am going to hand you a copy of the complaint
19 that was filed by the Bank of Commerce relative to the
20 lawsuit with Jefferson Enterprises and yourself.

21 A. Okay.

22 Q. Attached to that are various loan documents.
23 I just want to walk through these quickly. Exhibit A is
24 a promissory note. I'll represent to you it's a
25 promissory note from back in May 10, 2006. The date is

1 Q. The same thing with Exhibit D, Page 7 of 8, is
2 that your signature?

3 A. Yes.

4 MR. LARSON: When you are saying you, you are
5 talking about Jefferson Enterprises, not her
6 individually?

7 MR. TUCKER: Right, her signature as a
8 managing member of Jefferson Enterprises.

9 A. Yes, that's my signature.

10 Q. And Exhibit E is an extension. Again, is this
11 your signature?

12 A. Yes.

13 Q. There is actually two documents that are part
14 of Exhibit E. Is this also your signature on the second
15 page?

16 A. Yes.

17 Q. And then Exhibit F is a guaranty agreement
18 where you signed here (indicating). Is that your
19 signature?

20 A. Yes.

21 Q. And that's guaranteeing the obligations of
22 Jefferson Enterprises. Do you recall that you
23 personally guaranteed those obligations?

24 A. I don't recall that, no.

25 Q. But that is your signature.

1 actually up here (indicating), it is May 10, 2006.

2 A. Okay.

3 Q. It's the loan for \$2,223,805.

4 A. Okay.

5 Q. Is this your signature?

6 A. Yes.

7 Q. And you recall signing loan documents to get
8 those funds.

9 A. Yes, I do.

10 Q. Exhibit B is a promissory note for \$400,000
11 about a year later, and I'll represent to you to pay
12 interest. Again, on the third page of that, is that
13 your signature?

14 A. It is.

15 Q. And you don't dispute that you had signed
16 that?

17 A. No, I don't remember that one but that
18 certainly is my signature.

19 Q. And then Exhibit C is a mortgage, on Page 7 of
20 8, the signature there, is that again your signature?

21 A. Yes.

22 Q. You knew that as part of the loan you were
23 granting Bank of Commerce collateral in property, that's
24 why you were signing the real estate mortgage?

25 A. I can't say that I knew that, no.

1 A. Absolutely.

2 Q. And there is a second guaranty as part of
3 that, again. Is that again your signature?

4 A. Yes.

5 Q. And then there is a third guaranty agreement.
6 Is that your signature?

7 A. Yes.

8 Q. And do you know whether you have repaid any of
9 the funds that were loaned to you by the Bank of
10 Commerce?

11 A. I don't believe we have, but I'm not a hundred
12 percent certain of that.

13 Q. And, again, I know you haven't been that
14 involved, I just want to make sure that there is nothing
15 else that you have specific knowledge about regarding
16 the loan with the Bank of Commerce that you specifically
17 recall.

18 A. I think I have told you everything that I can
19 recall.

20 Q. And there are not any documents or notes or
21 other things that would refresh your memory or would
22 cause you to be able to remember other conversations or
23 other dealings that you had with the Bank of Commerce
24 that you are aware of?

25 A. I don't have any notes, I didn't take notes at

1 the time. Dustin really handled it. I wouldn't have
2 taken notes.

3 MR. TUCKER: That's all I have.

4 MR. LARSON: I don't have any questions.

5 (Witness excused at 4:05 p.m.)

6 (Signature requested.)
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1 CHANGE SHEET FOR SONYA J. MORRISON

2 PAGE _ LINE _ REASON FOR CHANGE _

3 READS _

4 SHOULD READ _

5 PAGE _ LINE _ REASON FOR CHANGE _

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18 READS _

19 SHOULD READ _

20 PAGE _ LINE _ REASON FOR CHANGE _

21 READS _

22 SHOULD READ _
23

24 DEPONENT SIGNATURE: _
25

1 CERTIFICATE OF SONYA J. MORRISON

2
3 I, SONYA J. MORRISON, being first duly sworn, depose
4 and say: That I am the witness named in the foregoing
5 deposition; that I have read said deposition and know
6 the contents thereof; that the questions contained
7 therein were propounded to me; and that the answers
8 therein contained are true and correct, except for any
9 changes that I may have listed on the Change Sheet
10 attached hereto.

11 DATED this _ day of _____, _____.

12 CHANGES ON ERRATA SHEET YES _ NO _
13
14

15 SONYA J. MORRISON

16 SUBSCRIBED AND SWORN to before me this _ day

17 of _____, _____.
18
19

20 NAME OF NOTARY PUBLIC

21 NOTARY PUBLIC FOR _____

22 RESIDING AT _____

23 MY COMMISSION EXPIRES _____
24
25

1 REPORTER'S CERTIFICATE

2 I, PAUL D. BUCHANAN, CSR NO. 7, Certified
3 Shorthand Reporter for the State of Idaho, certify:

4 That the foregoing proceedings were taken before
5 me at the time and place therein set forth, at which
6 time the witness was put under oath by me;

7 That the testimony and all objections made were
8 recorded stenographically by me and were thereafter
9 transcribed by me, or under my direction;

10 That the foregoing is true and correct record of
11 all testimony given, to the best of my ability;

12 I further certify that I am not a relative or
13 employee of any attorney or party, nor am I financially
14 interested in the action.

15 IN WITNESS WHEREOF, I set my hand and seal this
16 11th day of November, 2011.
17

18 *Paul D. Buchanan*
19

20 PAUL D. BUCHANAN, CSR, RPR, RMR

21 Notary Public

22 P.O. Box 2636

23 Boise, Idaho 83701-2636

24 My Commission expires: June 20, 2016
25

**BANK OF COMMERCE
CORPORATE TAX RETURN SPREAD**

NAME:

Jefferson Enterprises, LLC.

YEAR:

2004

2005

2006

GROSS RECEIPTS	\$	139	\$	198	\$	216,633		
COSTS OF GOODS SOLD					\$	57,282		
GROSS PROFIT	\$	139	\$	198	\$	159,351	\$	-
OPERATING EXPENSES	\$	7,392	\$	9,175	\$	4,964		
DEPRECIATION EXPENSE								
INTEREST EXPENSE								
NET PROFIT	\$	(7,253)	\$	(8,977)	\$	154,387	\$	-
DEPRECIATION EXPENSE	\$	-	\$	-	\$	-	\$	-
INTEREST EXPENSE	\$	-	\$	-	\$	-	\$	-
CASH FLOW	\$	(7,253)	\$	(8,977)	\$	154,387	\$	-

TABLER

EXHIBIT

"5"

TABLER

EXHIBIT

"F"

Income Statement

04/06/07

Jefferson Enterprises, LLC

Income Statement

Period 1 to 12
 , For 12 Months Ending December 2006

Operating Income

40000	Income	\$215,800.00	
	Total Operating Income:		\$215,800.00

Direct Expense

50000	COGS - Land	54,281.75
55000	COGS - Other	3,000.00
	Total Direct Expense:	57,281.75

Total Direct & Equip/Shop Expense:	57,281.75
Gross Profit:	158,518.25

Overhead Expense

61100	Bank Charges	85.00
68000	Fuel	4,399.03
69000	Miscellaneous	479.97
	Total Overhead Expense:	4,964.00

Total Indirect Expense:	4,964.00
Income from Operations:	153,554.25

Other Income

49000	Interest Income	833.18
	Total Other Income:	833.18
	Net Income Before Tax:	154,387.43
	Net Income:	\$154,387.43

COMBIN. COMMERCIAL CASH FLOW STATEMENT

NAME: Jefferson Enterprises, LLC.

	YEAR	2003	2004	2005	Average
Gross Sales/Revenue		\$ 2,121,580	\$ 6,073,240	\$ 7,107,217	\$ -
Cost of Sales		\$ 1,407,896	\$ 5,451,770	\$ 6,210,687	
Gross Profit		\$ 713,684	\$ 621,470	\$ 896,530	\$ -
EXPENSES					
OPERATING EXPENSES:					
Owner Comp/Drawings or Family Living					
Rent (If applicable)			\$ 22,689	\$ 39,005	\$ -
Depreciation/Amortization		\$ 71,421	\$ 153,512	\$ 125,877	
Longterm Deb Int. Exp			\$ 14,196	\$ 19,483	
General & Other Exp		\$ 618,134	\$ 279,861	\$ 436,477	\$ -
Other					
TOTAL EXPENSES		\$ 689,555	\$ 470,258	\$ 620,842	\$ -
NET BUSINESS INCOME		\$ 24,129	\$ 151,212	\$ 275,688	\$ -
OTHER INCOME:					
Wages					
Interest Income/Principal					
Other					
TOTAL INCOME		\$ 24,129	\$ 151,212	\$ 275,688	\$ -
NET INCOME BEFORE TAX		\$ 24,129	\$ 151,212	\$ 275,688	\$ -
CASH FLOW:					
Net Income		\$ 24,129	\$ 151,212	\$ 275,688	\$ -
Depreciation/Amortization		\$ 71,421	\$ 153,512	\$ 125,877	\$ -
Longterm Debt Int. Exp			\$ 14,196	\$ 19,483	\$ -
TOTAL CASH FLOW (funds available)		\$ 95,550	\$ 318,920	\$ 421,048	\$ -
TERM DEBT:					
Mortgage/Rent Payments					
Other Real Estate Payments					
Equipment Payments			\$ 80,104	\$ 115,926	
Lease Payments					
Other Term Debt		\$ 1			\$ 1
Other Term Debt					
TOTAL TERM DEBT		\$ 1	\$ 80,104	\$ 115,926	\$ 1
DEBT SERVICE RATIO		95,550.00	3.98	3.63	0.00

2005 COMBINED COMMERCIAL CASH FLOW STATEMENT

NAME: Jefferson Enterprises, LLC.

	Entity	ADH	ADC	Jefferson	ADR
Gross Sales/Revenue	\$ 6,682,237	\$ 337,643	\$ 198	\$ 87,139	
Cost of Sales	\$ 6,099,836	\$ 110,851	\$ -		
Gross Profit	\$ 582,401	\$ 226,792	\$ 198	\$ 87,139	
EXPENSES					
OPERATING EXPENSES:					
Owner Comp/Drawings or Family Living					
Rent (if applicable)	\$ 32,550	\$ 95		\$ 6,360	
Depreciation/Amortization	\$ 38,767	\$ 87,110			
Longterm Deb Int. Exp	\$ 6,480	\$ 13,003			
General & Other Exp	\$ 378,755	\$ 20,333	\$ 8,078	\$ 29,311	
Other					
TOTAL EXPENSES	\$ 456,552	\$ 120,541	\$ 8,078	\$ 35,671	
NET BUSINESS INCOME	\$ 125,849	\$ 106,251	\$ (7,880)	\$ 51,468	
OTHER INCOME:					
Wages					
Interest Income/Principal					
Other					
TOTAL INCOME	\$ 125,849	\$ 106,251	\$ (7,880)	\$ 51,468	
NET INCOME BEFORE TAX	\$ 125,849	\$ 106,251	\$ (7,880)	\$ 51,468	
CASH FLOW:					
Net Income	\$ 125,849	\$ 106,251	\$ (7,880)	\$ 51,468	
Depreciation/Amortization	\$ 38,767	\$ 87,110		\$ -	
Longterm Debt Int. Exp	\$ 6,480	\$ 13,003		\$ -	
TOTAL CASH FLOW (funds available)	\$ 171,096	\$ 206,364	\$ (7,880)	\$ 51,468	
Funds Available for Debt Service					
TERM DEBT:					
Mortgage/Rent Payments					
Other Real Estate Payments					
Equipment Payments	\$ 4,561	\$ 111,365			
Lease Payments					
Other Term Debt	\$ 34,000		\$ 957	\$ 1	
Other Term Debt					
TOTAL TERM DEBT	\$ 38,561	\$ 111,365	\$ 957	\$ 1	
DEBT SERVICE RATIO	4.44	1.85	-8.23	51,468.00	

2004 COMB. AND COMMERCIAL CASH FLOW STATEMENT

NAME: Jefferson Enterprises, LLC.

	Entity	ADH	ADC	Jefferson	ADR
Gross Sales/Revenue	\$ 5,770,764	\$ 255,687	\$ 139	\$ 46,650	
Cost of Sales	\$ 5,445,695	\$ 6,075	\$ -		
Gross Profit	\$ 325,069	\$ 249,612	\$ 139	\$ 46,650	
EXPENSES					
OPERATING EXPENSES:					
Owner Comp/Drawings or Family Living					
Rent (if applicable)	\$ 78	\$ 5,938		\$ 16,673	
Depreciation/Amortization	\$ 57,718	\$ 95,794			
Longterm Deb Int. Exp	\$ 13,958	\$ 238			
General & Other Exp	\$ 241,172	\$ 22,627	\$ 7,392	\$ 8,670	
Other					
TOTAL EXPENSES	\$ 312,926	\$ 124,597	\$ 7,392	\$ 25,343	
NET BUSINESS INCOME	\$ 12,143	\$ 125,015	\$ (7,253)	\$ 21,307	
OTHER INCOME:					
Wages					
Interest Income/Principal					
Other					
TOTAL INCOME	\$ 12,143	\$ 125,015	\$ (7,253)	\$ 21,307	
NET INCOME BEFORE TAX	\$ 12,143	\$ 125,015	\$ (7,253)	\$ 21,307	
CASH FLOW:					
Net Income	\$ 12,143	\$ 125,015	\$ (7,253)	\$ 21,307	
Depreciation/Amortization	\$ 57,718	\$ 95,794		\$ -	
Longterm Debt Int. Exp	\$ 13,958	\$ 238		\$ -	
TOTAL CASH FLOW (funds available)	\$ 83,819	\$ 221,047	\$ (7,253)	\$ 21,307	
TERM DEBT:					
Mortgage/Rent Payments					
Other Real Estate Payments					
Equipment Payments		\$ 80,104	\$ 1		
Lease Payments					
Other Term Debt	\$ 1			\$ 1	
Other Term Debt					
TOTAL TERM DEBT	\$ 1	\$ 80,104	\$ 1	\$ 1	
DEBT SERVICE RATIO	83,819.00	2.76	-7,253.00	21,307.00	

2003 COMMERCIAL CASH FLOW STATEMENT

NAME: Jefferson Enterprises, LLC.

	YEAR	ADH	ADC	Jefferson	ADR
Gross Sales/Revenue	\$ 2,121,580	\$ -	\$ -	\$ -	
Cost of Sales	\$ 1,407,896	\$ -	\$ -		
Gross Profit	\$ 713,684	\$ -	\$ -	\$ -	
EXPENSES					
OPERATING EXPENSES:					
Owner Comp/Drawings or Family Living					
Rent (if applicable)					\$ -
Depreciation/Amortization	\$ 71,421				
Longterm Deb Int. Exp					
General & Other Exp	\$ 618,134		\$ -	\$ -	
Other					
TOTAL EXPENSES	\$ 689,555	\$ -	\$ -	\$ -	
NET BUSINESS INCOME	\$ 24,129	\$ -	\$ -	\$ -	
OTHER INCOME:					
Wages					
Interest Income/Principal					
Other					
TOTAL INCOME	\$ 24,129	\$ -	\$ -	\$ -	
NET INCOME BEFORE TAX	\$ 24,129	\$ -	\$ -	\$ -	
CASH FLOW:					
Net Income	\$ 24,129	\$ -	\$ -	\$ -	
Depreciation/Amortization	\$ 71,421		\$ -	\$ -	
Longterm Debt Int. Exp			\$ -	\$ -	
TOTAL CASH FLOW (funds available)	\$ 95,550	\$ -	\$ -	\$ -	
TERM DEBT:					
Mortgage/Rent Payments					
Other Real Estate Payments					
Equipment Payments					
Lease Payments					
Other Term Debt	\$ 1		\$ 1	\$ 1	
Other Term Debt					
TOTAL TERM DEBT	\$ 1	\$ -	\$ 1	\$ 1	
DEBT SERVICE RATIO	95,550.00	0.00	0.00	0.00	

**BANK OF COMMERCE
CORPORATE TAX RETURN SPREAD**

NAME:

American Dream Construction Inc.

YEAR:	2003		2004		2005		2006			
GROSS RECEIPTS	\$	2,121,580	\$	255,687	\$	337,643	\$	369,227		
COSTS OF GOODS SOLD	\$	1,407,896	\$	6,075	\$	110,851	\$	193,530		
GROSS PROFIT	\$	713,684	\$	249,612	\$	226,792	\$	175,697	\$	-
OPERATING EXPENSES	\$	672,009	\$	28,565	\$	20,428	\$	54,065		
DEPRECIATION EXPENSE	\$	71,421	\$	95,794	\$	87,110	\$	91,099		
INTEREST EXPENSE	\$	-	\$	238	\$	13,003	\$	15,923		
NET PROFIT	\$	(29,746)	\$	125,015	\$	106,251	\$	14,610	\$	-
DEPRECIATION EXPENSE	\$	71,421	\$	95,794	\$	87,110	\$	91,099	\$	-
INTEREST EXPENSE	\$	-	\$	238	\$	13,003	\$	15,923	\$	-
CASH FLOW	\$	41,675	\$	221,047	\$	206,364	\$	121,632	\$	-

American Dream Construction Inc.

Income Statement

12

Operating Income

40000	Excavation Income	\$368,796.16	
40500	Miscellaneous Income	263.97	
	Total Operating Income:		\$369,060.13

Direct Expense

50100	Fuel	52,014.80	
50200	Maintenance	7,089.37	
50300	Repairs	24,700.32	
51500	fees & permits	457.20	
	Total Direct Expense:	84,261.69	

Total Direct & Equip/Shop Expense:	84,261.69
Gross Profit:	284,798.44

Overhead Expense

61500	Interest Expense	15,923.39	
61700	Taxes	20.81	
61800	Insurance	10,308.00	
62000	Depreciation Expense	91,099.74	
62600	Supplies	30,878.38	
62700	Equipment Rent	10.49	
63200	Advertising	9,000.00	
69000	Miscellaneous	3,846.39	
	Total Overhead Expense:	161,087.20	

Administrative Expense

70000	fuel	1,180.22	
75000	Excavation Labor	108,088.06	
	Total Administrative Expense:	109,268.28	

Income Statement

Continued...

Total Indirect Expense:	270,355.48
Income from Operations:	14,442.96
Other Income	
49000 Interest Income	167.16
Total Other Income:	167.16
Net Income Before Tax:	14,610.12
Net Income:	<u>\$14,610.12</u>

JEFFERSON ENTERPRISES, LLC

FINANCIAL STATEMENTS
WITH
ACCOUNTANTS' COMPILATION REPORT

YEAR ENDED DECEMBER 31, 2005

The Bank of Commerce American Falls Branch

Name: Dustin Morrison
Sonya Morrison

Check One:

- ☐ Individual Credit - relying solely on my income
☒ Joint Credit - We intend to apply for joint credit.
(Initials) DM SM
☐ Individual Credit - relying on my income as well as income from other sources.

Rudd & Company PLLC
Certified Public Accountants • Business Consultants

To the Member of
Jefferson Enterprises, LLC
Pocatello, Idaho

We have compiled the accompanying consolidated balance sheet of Jefferson Enterprises, LLC as of December 31, 2005, and the related consolidated income statement for the year then ended, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

A compilation is limited to presenting in the form of financial statements information that is the representation of management. We have not audited or reviewed the accompanying consolidated financial statements and, accordingly, do not express an opinion or any other form of assurance on them.

Management has elected to omit substantially all of the disclosures and the statement of cash flows required by generally accepted accounting principles. If the omitted disclosures and the statement of cash flows were included in the consolidated financial statements, they might influence the user's conclusions about the Company's financial position, results of operations, and cash flows. Accordingly, these consolidated financial statements are not designed for those who are not informed about such matters.

Generally accepted accounting principles require that consolidated financial statements be presented for more than 50% owned subsidiaries. Management has elected to depart from generally accepted accounting principles and report Southern Hills, LLC, a 100% owned subsidiary, on the equity method of accounting. The effects of this departure from generally accepted accounting principles has not been determined.

March 8, 2006

Rudd & Company PLLC

Balance Sheet

Jefferson Enterprises, LLC

December 31, 2005

Assets

Net Long Term Assets:		<u>0.00</u>
Other Assets		
14000	Ridgewood Land	124,722.61
14100	Southern Hills Dev. Investment	<u>476,209.78</u>
14200	Vineyard Court Project	654,729.66
14300	Stone Creek Project	<u>651,559.89</u>
Total Other Assets:		<u>1,907,221.94</u>
Total Assets:		<u><u>\$1,907,221.94</u></u>

Liabilities

Current Liabilities

20010	Book Overdraft	<u>957.28</u>	
Total Current Liabilities:			957.28

Long Term Liabilities

28100	Ridgewood Loan	100,000.00	
28200	Stone Creek Subdivision	482,115.27	
28250	Vineyard Court Loan	<u>221,500.00</u>	
Total Long Term Liabilities:			<u>803,615.27</u>
Total Liabilities:			804,572.55

Equity

Equity/Capital

31000	Owner's Capital	1,528,707.56
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See Accountants' Compilation Report

AMERICAN DREAM CONSTRUCTION, INC.

FINANCIAL STATEMENTS
WITH
ACCOUNTANTS' COMPILATION REPORT

YEAR ENDED DECEMBER 31, 2005

The Bank of Commerce American Falls Branch

Name: Dustin Morrison
Sanya Morrison

Check One:

- ☐ Individual Credit - relying solely on my income
☒ Joint Credit - We intend to apply for joint credit.
(Initials) DM SM
☐ Individual Credit - relying on my income as well as income from other sources.

Rudd & Company PLLC
Certified Public Accountants • Business Consultants

To the Shareholder of
American Dream Construction, Inc.
Pocatello, Idaho

We have compiled the accompanying balance sheet of American Dream Construction, Inc. (a S-corporation) as of December 31, 2005, and the related income statement for the year then ended, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

A compilation is limited to presenting in the form of financial statements information that is the representation of management. We have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them.

Management has elected to omit substantially all of the disclosures and the statement of cash flows required by generally accepted accounting principles. If the omitted disclosures and the statement of cash flows were included in the financial statements, they might influence the user's conclusions about the Company's financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

March 8, 2006

Rudd & Company PLLC

Balance Sheet

American Dream Construction, Inc.

December 31, 2005

Assets

Current Assets

10100	Operational Account	9,589.94 ✓	
12000	Account Receivable	5,441.06 ✓	
Total Current Assets:			\$15,031.00

Long Term Assets

17000	Equipment	517,705.44 ✓	
Total Long Term Assets:		517,705.44	

Accumulated Depreciation

19000	Accumulated Depreciation	(64,782.95)	
Total Accumulated Depreciation:		(64,782.95)	
Net Long Term Assets:			452,922.49

Total Assets:	<u>\$467,953.49</u>
---------------	---------------------

Liabilities

Current Liabilities

26000	Current Portion Long Term Debt	111,365.42 ✓	
Total Current Liabilities:			111,365.42

Long Term Liabilities

28500	Caterpillar Equipment Loan	61,243.10
28600	CIT - Backhoe Loan	5,776.83
28700	CIT - Equipment Loan	41,254.03
28750	CIT - Equipment Loan	89,562.76

See Accountants' Compilation Report

Balance Sheet

Continued...

28875	CIT Equipment Loan	60,740.53	
	Total Long Term Liabilities:		258,577.25 ✓
	Total Liabilities:		369,942.67
Equity			
Equity/Capital			
30000	Capital Stock	102,144.83	
33000	Retained Earnings	(20,069.38)	
	Subtotal Equity/Capital:	82,075.45	
Owner's Drawing/Dividend			
35000	Distributions	(130,117.13)	
	Total Owner's Drawing/Dividend:	(130,117.13)	
	Current Profit (Loss):	146,052.50	
	Total Equity/Capital:		98,010.82
	Total Liabilities + Equity:		\$467,953.49

See Accountants' Compilation Report

Income Statement

American Dream Construction, Inc.

For the Year Ended December 31, 200:

Operating Income

40000	Excavation Income	\$337,643.14	
	Total Operating Income:		\$337,643.14

Direct Expense

50100	Fuel	26,153.42
50200	Maintenance	6,797.00
50300	Repairs	18,392.98
51500	Fees & Permits	558.72
	Total Direct Expense:	51,902.12

Total Direct & Equip/Shop Expense:	51,902.12
Gross Profit:	285,741.02

Overhead Expense

61500	Interest Expense	13,003.29
61700	Taxes	56.00
61800	Insurance	4,852.00
62000	Depreciation Expense	53,141.80
62600	Supplies	14,433.39
62700	Equipment Rent	95.00
63200	Advertising	596.59
69000	Miscellaneous	2,225.27
	Total Overhead Expense:	88,403.34

Administrative Expense

75000	Excavation Labor	57,118.78
	Total Administrative Expense:	57,118.78
	Total Indirect Expense:	145,522.12
	Income from Operations:	140,218.90

See Accountants' Compilation Report

Income Statement

Continued...

Other Income

49000	Interest Income	<u>5,833.60</u>	
	Total Other Income:		<u>5,833.60</u>
	Net Income Before Tax:		<u>146,052.50</u>
	Net Income:		<u><u>\$146,052.50</u></u>

See Accountants' Compilation Report

FINANCIAL PROPOSAL: AMERICAN DREAM CONSTRUCTION, INC.

DEBT SCHEDULE AS OF: DECEMBER 31, 2005

CREDITOR	START DATE	Original Loan Amount	Down Payment	12/31/2005 Balance	Current Portion Long Term Debt	Long Term Debt Remaining	MONTHLY PAYMENT	INTEREST RATE	INTEREST REMAINING MONTHS	COLLATERAL
CURRENT LIABILITIES:										
Caterpillar Financing	8/16/04	125,461.00	13,755.00	91,870.91	30,627.81	61,243.10	2,936.07	5.82%	34	Excavator & Loader
CIT Equip. Financing	8/17/04	20,878.38	18,491.62	12,750.60	6,973.77	5,776.83	637.53	5.75%	22	Caterpillar Backhoe
CIT Equip. Financing	8/17/04	67,641.20	-	24,060.94	24,060.94	0.00	2,996.38	5.75%	9	1987 Ford F700 Service Truck & 1988 Peterbuilt 357 Dump Truck
CIT Equip. Financing	8/17/04	60,524.42		52,606.40	11,352.37	41,254.03	1,195.60	6.85%	46	Two Spray Trailers, Two Dump Trailers, Tiltdeck Trailer, Equipment Trailer, Six Dumpsters
CIT Equip. Financing	12/14/05	114,589.55	13,000.00	114,589.55	25,026.79	89,562.76	2,821.73	8.36%	48	1998 Peterbuilt Truck, 1999 Kenworth Dump Truck, 1978 Loading Lowboy Trailer, & 2005 Tilt Deck Trailer
CIT Equip. Financing	12/20/05	74,064.27		74,064.27	13,323.74	60,740.53	1,820.32	8.00%	48	2002 Caterpillar with C4C Compactor & 2002 Caterpillar Skid Steer Loader
SUBTOTALS		463,158.82	45,246.62	369,942.67	111,365.42	258,577.25	12,407.63			

NON-CURRENT LIABILITIES:

111,365.42

LONG TERM LIABILITIES:

258,577.25

TOTAL

369,942.67



**BANK OF COMMERCE
PERSONAL TAX RETURN SPREAD**

NAME:	Dustin Morrison	Sonya Kidd
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YEAR:	2003	2004	2005		
WAGES/SALARIES					
INTEREST INCOME	\$ 377	\$ 7,956	\$ 7,956		
DIVIDEND INCOME					
BUSINESS INCOME	\$ 19,425	\$ 14,054	\$ 14,054		
RENTAL INCOME		\$ 35,158	\$ 35,158		
FARM INCOME					
CAPITAL GAIN					
IRA/PENSION					
OTHER INCOME					
OTHER INCOME					
TOTAL INCOME	\$ 19,802	\$ 57,168	\$ 57,168	\$ -	\$ -
DEPRECIATION EXPENSE	\$ 71,421	\$ 102,000	\$ 105,000		
INTEREST EXPENSE	\$ 8,979	\$ 10,826	\$ 10,646		
TOTAL CASH FLOW	\$ 100,202	\$ 169,994	\$ 172,814	\$ -	\$ -

1030
Form 40 - 2004 DUSTIN MORRISON AND SONYA KIDD
TC4004-2 9-21-04

Page 2

23	Tax amount from line 22	23	5,936.
CREDITS. Limits apply. See instructions.			
24	Income tax paid to other states. Attach Form 39R and a copy of the other state return(s)	24	
25	Credit for contributions to Idaho educational entities	25	
26	Investment tax credit. Attach Form 49. Earned = _____ Allowed = _____	26	2,968.
27	Credit for contributions to Idaho youth and rehabilitation facilities	27	
28	Credit for production equipment using post-consumer waste	28	
29	Promoter-sponsored event credit	29	
30	Credit for qualifying new employees. Att Form 55. Earned = _____ Allowed = _____	30	
31	Credit for Idaho research activities. Att Form 67. Earned = _____ Allowed = _____	31	
32	Broadband equipment investment cr. Att Form 68. Earned = _____ Allowed = _____	32	
33	Incentive investment tax credit. Attach Form 69	33	
34	TOTAL CREDITS. Add lines 24 through 33	34	2,968.
35	Subtract line 34 from line 23. If line 34 is more than line 23, enter zero	35	2,968.
OTHER TAXES. See instructions.			
36	Fuels tax due. Attach Form 75	36	
37	Sales/Use tax due on mail order, Internet, and other nontaxed purchases	37	
38	Tax from recapture of investment tax credit. Attach Form 49R	38	
39	Tax from recapture of broadband equipment investment credit. Attach Form 68R	39	
40	Tax from recapture of incentive investment tax credit. Attach Form 69R	40	
41	Permanent building fund. Check the box if you are receiving Idaho public assistance payments	41	10.00
42	TOTAL TAX. Add lines 35 through 41	42	2,978.
DONATIONS. See instructions.			
43	I wish to donate to the Nongame Wildlife Conservation Fund	43	
44	I wish to donate to the Children's Trust Fund/Child Abuse Prevention	44	
45	TOTAL TAX PLUS DONATIONS. Add lines 42 through 44	45	2,978.
PAYMENTS AND OTHER CREDITS. See instructions.			
46	Grocery credit. \$20 per person claimed on line 6d	46	80.
47	Additional grocery credit. \$15 per person 65 or older claimed on line 14a	47	
48	Maintaining a home for family member age 65 or older, or developmentally disabled. Attach Form 39R	48	
49	Special fuels tax refund Gasoline tax refund Attach Form 75	49	
50	Idaho income tax withheld. Attach Form(s) W-2	50	
51	2004 Form 51 payment(s) and amount applied from 2003 return	51	
52	TOTAL PAYMENTS AND OTHER CREDITS. Add lines 46 through 51	52	80.
TAX DUE OR REFUND. See instructions.			
If line 45 is more than line 52, GO TO LINE 53. If line 45 is less than line 52, GO TO LINE 56.			
53	TAX DUE. Subtract line 52 from line 45	53	2,898.
54	Penalty Interest from the due date Enter total	54	
Check box if penalty is due to an ineligible withdrawal from an Idaho medical savings account			
55	TOTAL DUE. Add lines 53 and 54. Make check or money order payable to the Idaho State Tax Commission	55	2,898.
56	OVERPAID. Line 52 minus lines 45 and 54. This is the amount you overpaid	56	
57	REFUND. Amount of line 56 to be refunded to you	57	
58	ESTIMATED TAX. Amount of line 56 to be applied to your 2005 estimated tax	58	
59 DIRECT DEPOSIT. See instructions.			
Routing No. _____ Account No. _____		Type of Account:	<input type="checkbox"/> Checking <input type="checkbox"/> Savings
AMENDED RETURN ONLY. Complete this section to determine your tax due or refund.			
60	Total tax due (line 55) or overpayment (line 56) on this return	60	
61	Refund from original return plus additional refunds	61	
62	Tax paid with original return plus additional tax paid	62	
63	Amended tax due or refund. Add lines 60 and 61 and subtract line 62	63	
<input checked="" type="checkbox"/> Within 180 days of receiving this return, the Idaho State Tax Commission may discuss this return with paid preparer identified below. Under penalties of perjury, I declare that to the best of my knowledge and belief this return is true, correct and complete.			
SIGN HERE	Your signature	Date	Field preparer's signature
	Spouse's signature (if a joint return, BOTH MUST SIGN)	Daytime phone	Preparer's EIN, SSN, or PTIN
		208-238-1204	JOHN R CLARK RUDD & COMPANY PLLC 3825 VALLEY COMMONS DRIVE, SUITE 2 BOZEMAN, MT 59718 EIN: 82-0467399

**BANK OF COMMERCE
PERSONAL TAX RETURN SPREAD**

NAME:	Dustin Morrison		Sonya Morrison	
YEAR:	2003	2004	2005	
WAGES/SALARIES				
INTEREST INCOME	\$ 377	\$ 7,956	\$ 10,504	
DIVIDEND INCOME				
BUSINESS INCOME	\$ 19,425	\$ 14,054	\$ 42,491	
RENTAL INCOME		\$ 35,158	\$ 125,842	
FARM INCOME				
CAPITAL GAIN				
IRA/PENSION				
OTHER INCOME				
OTHER INCOME				
TOTAL INCOME	\$ 19,802	\$ 57,168	\$ 178,837	\$ - \$ -
DEPRECIATION EXPENSE	\$ -			
INTEREST EXPENSE				
TOTAL CASH FLOW	\$ 19,802	\$ 57,168	\$ 178,837	\$ - \$ -

SCHEDULE 1 NOTES AND CONTRACTS RECEIVABLE

Debtor	Collateral	Amount Due In One Year	Amount Due Over One Year	Terms
TOTAL		\$ -	\$ -	

SCHEDULE 2 CONTRACTS PAYABLE

Creditor	Collateral	Amount Due in One Year	Amounts Due Over One Year	Terms
GMAC	Cadillac Escalade	\$ 3,000.00	\$ 7,000.00	
Equipment Finance	Construction Equipment	\$ 111,365.00	\$ 258,577.00	
80 Acres Inc.	61 Acres	\$ 35,000.00	\$ 563,767.00	
Equipment Finance	House Building Equipment	\$ 4,561.00	\$ 26,625.00	
TOTAL		\$ 153,926.00	\$ 855,969.00	

SCHEDULE 3 REAL ESTATE OWNED

Location	Improvements	Name Title Held	Value of Land and Improvements	Amount of Mortgages	Mortgagor	When Due
720 Mrytie	Rental		\$ 90,000.00	\$ 63,000.00	Wash. Fed.	
4755 Heide Court	Personal Residence		\$ 305,000.00	\$ 175,000.00	Wash. Fed.	
Building	American Dream Homes		\$ 6,012.00			
TOTAL			\$ 401,012.00	\$ 238,000.00		

Are your Federal and State Taxes paid current	Yes X No	Are your Real Estate Taxes paid current?	Yes X No
Are you a co-maker, endorser or guarantor on any loan or contract?	Yes X No	If "Yes" for whom?	
Are there unsatisfied judgments against you?	Yes No X	amount \$	If "Yes" to whom owed?
Have you filed Bankruptcy in the last 14 years?	NO X	If "Yes" where	For what reasons? Year

Life Insurance Carried: _____ Beneficiary: _____
 Fire Insurance: Building _____ Extended Coverage: _____ Public Liability: _____

NOTICE OF RIGHT OF APPRAISAL: In the event you have applied for a loan that might or will be secured by residential real property, you have the right to a copy of the appraisal report in connection with your application for credit. If you would like a copy, please write to us at the office from which you obtained this request. In order to comply with your request, please provide the following: Name used on the application, your complete address, your phone number, and your application or loan number, if known. If you wish a copy, you must notify us no later than 90 days after we notify you about the action taken on your credit application or 90 days from the date you withdraw your application. This is to advise you that the sole purpose of the appraisal is to establish the adequacy of the property as security for the loan. The Bank of Commerce the appraise, any inspector retained by The Bank of Commerce, and any Agency insuring the loan make no representation or warranties of any kind or nature as to the market value of the property or its improvements.

SOURCES OF INCOME	REFERENCES AND REMARKS
TOTAL:	\$0.00

Everything that I have stated in this application is correct to the best of my knowledge. I understand that The Bank of Commerce will retain this application whether or not the loan is approved. The Bank of Commerce is authorized to check my credit and employment history and to review prior credit history with The Bank of Commerce and other credit reporting agencies as needed. I have read and understand the application form and agree to provide any additional information which may be legally required to determine credit worthiness. (NOTE: Falsification of credit information to a bank may be a federal offense and may result in exemption from discharge in the event a petition for bankruptcy is filed)

Signed: 5/8/2006

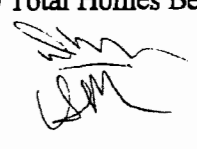
Signature: _____

Signature: _____

[Handwritten Signature]
[Handwritten Signature]

Dustin Morrison
Sonya Kidd

	<u>Appraised Value</u>	<u>% Completed Value</u>	<u>Outstanding Loan</u>
Homes Being Built			
2705 Sonoma – Pocatello	\$ 270,000	\$ 213,300	\$ 171,549
2777 Sonoma – Pocatello	326,000	176,040	146,265
2751 Sonoma – Pocatello	325,500	211,575	170,911
2630 Hillview Drive – Pocatello	303,000	293,910	237,460
2721 Sonoma – Pocatello	282,000	267,900	215,042
2765 Sonoma – Pocatello	287,000	172,200	139,834
2781 Sonoma – Pocatello	325,000	234,000	189,313
4740 Indepence – Chubbuck	198,000	182,160	146,360
4730 Independence – Chubbuck	203,000	186,760	150,255
4831 Greystone Lane – Idaho Falls	<u>238,000</u>	<u>218,960</u>	<u>177,039</u>
10 Total Homes Being Built	\$2,757,500	\$2,156,805	\$1,744,028



	<u>Under Contract Amount</u>		
Homes Sold			
4855 Greystone Lane – Idaho Falls	\$ 220,000	\$200,200	\$ 161,022
4780 Greystone Lane – Idaho Falls	236,000	110,920	89,531
4802 Greystone Lane – Idaho Falls	246,500	133,100	107,438
4850 Greystone Lane – Idaho Falls	266,500	207,870	168,329
4838 Greystone Lane – Idaho Falls	276,000	190,440	152,458
4847 Greystone Lane – Idaho Falls	239,500	131,725	132,504
4825 Blackstone Drive – Idaho Falls	<u>237,000</u>	<u>196,710</u>	<u>158,579</u>
7 Total Homes Sold	\$1,721,500	\$1,170,965	\$ 969,861

20 % Profit Margin on Appraised Value of these homes is \$885,800

Before Bot Loan Closing


dress:

Birthdate: _____ Occupation: Construction, Realty Phone Number: 547-7409

Check One: ☐ Individual Credit - relying solely on my income ☒ Joint Credit - We intend to apply for joint credit. (Initials)

Check One: ☐ Individual Credit- relying solely on my income ☒ Joint Credit - We intend to apply for joint credit. (Initials)

☐ Individual Credit-relying on my income as well as income from other sources

For the purpose of obtaining credit with you from time to time, I/we herewith submit the following as being fair and accurate statement of my/our financial condition at the close of business on: 5/8/2006 

BOC 000619

SCHEDULE 1 NOTES AND CONTRACTS RECEIVABLE

Debtor	Collateral	Amount Due In One Year	Amount Due Over One Year	Terms
TOTAL		\$ -	\$ -	

SCHEDULE 2 CONTRACTS PAYABLE

Creditor	Collateral	Amount Due in One Year	Amounts Due Over One Year	Terms
GMAC	Cadillac Escalade	\$ 3,000.00	\$ 7,000.00	
Equipment Finance	Construction Equipment	\$ 111,365.00	\$ 258,577.00	
Bank of Commerce	397 Acres Development		\$ 2,200,000.00	
Equipment Finance	House Building Equipment	\$ 4,561.00	\$ 26,625.00	
TOTAL		\$ 118,926.00	\$ 2,492,202.00	

SCHEDULE 3 REAL ESTATE OWNED

Location	Improvements	Name Title Held	Value of Land and Improvements	Amount of Mortgages	Mortgagor	When Due
720 Myrtle	Rental		\$ 90,000.00	\$ 63,000.00	Wash. Fed.	
4755 Heide Court	Personal Residence		\$ 305,000.00	\$ 175,000.00	Wash. Fed.	
Building	American Dream Homes		\$ 6,012.00			
TOTAL			\$ 401,012.00	\$ 238,000.00		

Are your Federal and State Taxes paid current	Yes X No	Are your Real Estate Taxes paid current?	Yes X No
Are you a co-maker, endorser or guarantor on any loan or contract?	Yes X No	If "Yes" for whom?	
Are there unsatisfied judgments against you?	Yes No X	amount \$	If "Yes" to whom owed?
Have you filed Bankruptcy in the last 14 years?	NO X	If "Yes" where	For what reasons? Year

Life Insurance Carried: _____ Beneficiary: _____
 Fire Insurance: Building _____ Extended Coverage: _____ Public Liability: _____

NOTICE OF RIGHT OF APPRAISAL: In the event you have applied for a loan that might or will be secured by residential real property, you have the right to a copy of the appraisal report in connection with your application for credit. If you would like a copy, please write to us at the office from which you obtained this request. In order to comply with your request, please provide the following: Name used on the application, your complete address, your phone number, and your application or loan number, if known. If you wish a copy, you must notify us no later than 90 days after we notify you about the action taken on your credit application or 90 days from the date you withdraw your application. This is to advise you that the sole purpose of the appraisal is to establish the adequacy of the property as security for the loan. The Bank of Commerce the appraiser, any inspector retained by The Bank of Commerce, and any Agency insuring the loan make no representation or warranties of any kind or nature as to the market value of the property or its improvements.

SOURCES OF INCOME	REFERENCES AND REMARKS
TOTAL:	\$0.00

Everything that I have stated in this application is correct to the best of my knowledge. I understand that The Bank of Commerce will retain this application whether or not the loan is approved. The Bank of Commerce is authorized to check my credit and employment history and to review prior credit history with The Bank of Commerce and other credit reporting agencies as needed. I have read and understand the application form and agree to provide any additional information which may be legally required to determine credit worthiness. (NOTE: Falsification of credit information to a bank may be a federal offense and may result in exemption from discharge in the event a petition for bankruptcy is filed)

Signed: 5/10/2006

Signature: _____

Signature: _____

LOAN COMMITTEE & LOAN REPORT SHEET

Recommending Officer: Steven E. Worton
Date of Loan Committee: May 2, 2006
Business Description: Construction, Realty
Principals: Dustin Morrison Sonya Kidd

NAME: Jefferson Enterprises, LLC. ☐ Individual
☐ Partnership
☐ Corporation
☒ LLC
☐ Other

ADDRESS: 4755 Heidi Court
 Chubbuck, ID 83202

TAX ID: 518-11-0756 PHONE:

PRESENT LOAN BALANCES

Loan Number	Loan Date	Committed Amount	Current Balance	Interest Rate	Collateral Description	Collateral Valuation	Payment Amount	Final Maturity

PRESENT LOAN BALANCES Total Committed Balance Customer Will Owe if This Loan is Made: \$ 2,800,000 2,200,000 CREDIT LIFE ☐ Yes ☒ No

LOAN REQUEST \$ 2,800,000.00 2,200,000	<input checked="" type="checkbox"/> Single Advance	INTEREST RATE ADJUSTABLE: 2.00% Over Prime 9.75% Beginning Interest Rate 7.00% Minimum Interest Rate 18.00% Maximum Interest Rate
	<input type="checkbox"/> Multiple Advance <input type="checkbox"/> Revolving Line	
PURPOSE OF LOAN: To Refinance Land	LOAN FEE 22,000 \$20,000 1%	

RATE TO ADJUST: ☒ Daily ☐ Quarterly ☐ Semi-Annual ☐ Annually ☐ 3 Year Arm ☐ 5 Year Arm

REPAYMENT TERMS: Single payment Principle, monthly interest payments 1 year maturity

SOURCE OF PAYMENTS: Selling Lots, Home Construction

LOAN MAY QUALIFY FOR CRA: ☐ Yes ☒ No

COLLATERAL OR GUARANTORS: 1st Dot, Personal Guarantees of Dustin and Sonya TOD of \$500,000 to cover interest for year term All LLC's 100% owned by Dustin and Sonya	Present Collateral Value:	Projected Value:	Present Ratio Loan Value
	\$7,000,000	\$7,000,000	40% 40%
	\$7,000,000	\$7,000,000	Projected Ratio Loan Value

DEPOSITS:

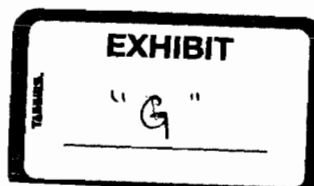
Account Number	Date Opened	Current Balance	Average Balance
Will Open Personal and Business Account			

PRIOR PAYMENT HISTORY: Attached Credit Report Shows all accounts paid as agreed. No adverse credit

OPERATING BACKUP:

COMMENTS: See Attached Loan Comments	LOAN APPROVAL BY:
	EXPECTED CLOSING DATE
	05/09/06
	LOAN GRADE
	3

4014800021



CUSTOMER ANALYSIS

Jefferson Enterprises, LLC., Dustin Morrison and Sonya Kidd

Comments:

Dustin Morrison a home builder and Sonya Kidd a local realtor a married couple have requested that the bank help them with their real estate development project in the Pocatello City limits. This project is located in the southern part of town north east of Century High School. There are 385 acres in this development which is being offered as security for this loan request of \$2,800,000. The appraised value of this development "as is" today is \$7,000,000. The appraisal was ordered by DL Evans bank and speaking with Kim Webber, DL will assign the appraisal over to The Bank of Commerce. The loan would be to Jefferson Enterprises, LLC which Dustin and Sonya are 100% owners. The loan will be personally guaranteed by Dustin and Sonya. \$500,000 will come from the loan proceeds and set in the bank as a CD as security to pay the monthly interest obligation on this note. Dustin has been a home builder since he was 19 years old working with his grandfather in this business. In 1997 he began building his first home which he sold and then after three homes was told that he needed to get his contractor license. His homes have won the Homebuilder of the year award for 5 years straight in the Pocatello area. Dustin and Sonya have a home building business, a heavy construction business, land development business and real estate brokerage business. All business structures are sole proprietor, S corp. or partnerships with Dustin and Sonya being 100% owners. Financial information is being presented on a consolidated basis of all business entities. Dustin wants to go ahead with the project and would like the bank to help him with that; however Tom and I have said that Dustin needs to come in with \$2,800,000 cash before the bank will proceed with any further business on this development.

Character:

Dustin and Sonya have handled all credit accounts as agreed. Credit report shows no adverse credit relating to charge accounts. In all my conversations with Dustin he has been very forth right and all information that he has presented to me has been right. Both Dustin and Sonya have a good reputation in the Pocatello community and his building skills exhibit skill and integrity.

Capacity:

Looking at the combined cash flow statement on all entities there is positive cash flow of \$421,048 which shows a debt service ration of 3.63 to 1. On a projected basis the monthly interest of the proposed loan is \$22,750. This will bring the debt service ratio down to 1.26:1. However, Dustin has agreed to take \$500,000 from the proceeds of this loan and place in the Bank as security to service this monthly interest.

Capital:

From a combined statement the net worth of the applicants is 44% with the bulk of the worth being the appraised value of the property that the bank will be taking as security. With homes that are being built and what have been sold the working capital stands as \$978,413 which gives current ratio of 134%. Debt to Asset ratio is 56%. Overall this

young couple have done several things using the talents they have been given and are headed in the right direction.

Conditions:

The terms of this loan would be for one year with monthly interest payments being made out of cash flow or the secured proceeds that the bank will hold in the amount of \$500,000. The security of this loan would be approximately 385 acres that have a master plan approved by the City of Pocatello for development and have been annexed into the City. Interest rate is 2.00% over prime and a loan fee of \$28,000. Dustin and Sonya will both sign the loan as personal guarantors. Dustin and Sonya will be required to open all business and personal accounts with the bank. If Dustin is unable to obtain the necessary cash infusion for the bank to look at the next phase he has agreed to refinance or sell the property to pay the principle on this loan.

Credit History:

Dustin and Sonya have no adverse credit all accounts have been handled as agreed. No credit history with the bank as they are new customers.

Strengths:

Dustin's ability and reputation as a land developer and builder are good. Has handled his construction business in a satisfactory manner. Has picked a great property and has a great appraised value on this property due to his work with the city and being able to work the annexation process with them. Good security in the property and has ability to cash flow interest payments.

Weakness:

Debt to Net Worth

A huge project that will be years developing

Lack of experience in this large of a development

Working capital and cash to go onto phase one

LOAN COMMITTEE & LOAN REPORT SHEET

Recommending Officer: Steven E. Worton
Date of Loan Committee: May 2, 2006
Business Description: Construction, Realty
Principals: Dustin Morrison Sonya Kidd

NAME: Jefferson Enterprises, LLC.	<input type="checkbox"/> Individual
ADDRESS: 4755 Heidi Court	<input type="checkbox"/> Partnership
Chubbuck, ID 83202	<input type="checkbox"/> Corporation
TAX ID: 518-11-0756	<input checked="" type="checkbox"/> LLC
PHONE:	<input type="checkbox"/> Other

PRESENT LOAN BALANCES								
Loan Number	Loan Date	Committed Amount	Current Balance	Interest Rate	Collateral Description	Collateral Valuation	Payment Amount	Final Maturity

PRESENT LOAN BALANCES	Total Committed Balance Customer Will Owe If This Loan is Made: \$ 2,800,000	CREDIT LIFE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
------------------------------	--	--

LOAN REQUEST \$ 2,800,000.00	<input checked="" type="checkbox"/> Single Advance <input type="checkbox"/> Multiple Advance <input type="checkbox"/> Revolving Line	INTEREST RATE FIXED LOAN FEE \$28,000 1%	ADJUSTABLE: <u>2.00%</u> Over Prime <u>9.75%</u> Beginning Interest Rate <u>7.00%</u> Minimum Interest Rate <u>18.00%</u> Maximum Interest Rate
PURPOSE OF LOAN: To Refiance Land			

RATE TO ADJUST:	<input checked="" type="checkbox"/> Daily <input type="checkbox"/> Quarterly <input type="checkbox"/> Semi-Annual <input type="checkbox"/> Annually <input type="checkbox"/> 3 Year Arm <input type="checkbox"/> 5 Year Arm
-----------------	---

EPAYMENT TERMS: Single payment Principle, monthly interest payments 1 year maturity	SOURCE OF PAYMENTS: Selling Lots, Home Construction
---	---

LOAN MAY QUALIFY FOR CRA: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
COLLATERAL OR GUARANTORS: 1st Dot, Personal Guarantees of Dustin and Sonya TCD of \$360,000 to cover interest for year term	Present Collateral Value: \$7,000,000	Projected Value: \$7,000,000	Present Ratio Loan Value 40% 40%
	\$7,000,000	\$7,000,000	Projected Ratio Loan Value

DEPOSITS:			
Account Number	Date Opened	Current Balance	Average Balance

PRIOR PAYMENT HISTORY: Attached Credit Report Shows all accounts paid as agreed. No adverse credit	OPERATING BACKUP:
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COMMENTS: See Attached Loan Comments	LOAN APPROVAL BY:
	EXPECTED CLOSING DATE
	05/09/06
	LOAN GRADE 3

**Southern Hills Development
Lot Development
13 year Projection (in thousands)**

	A	B	(A + B)		C	
Year	Revenue	Development Costs	Cash Increase / (Decrease)	Accumulated Cash Balance	Interest / (Finance Fees)	Accumulated Adjusted Cash Balance
1	1,828	(3,169)	(1,340)	(1,340)	(161)	(1,501) a
2	1,828	(1,600)	230	(1,111)	(133)	(1,244)
3	1,913	(1,098)	818	(293)	(35)	(328)
4	2,230	(2,219)	15	(278)	(33)	(311)
5	1,768	(1,181)	591	314	38	351
6	1,631	(936)	701	1,015	122	1,137
7	1,980	(1,745)	242	1,257	151	1,408
8	3,900	(1,965)	1,943	3,200	384	3,584
9	3,870	(1,623)	2,257	5,456	655	6,111
10	3,373	(1,860)	1,523	6,979	837	7,816
11	3,895	(1,968)	1,939	8,917	1,070	9,987
12	4,528	(2,980)	1,560	10,477	1,257	11,734
13	1,955	(986)	982	11,459	1,375	12,834
	9,453	(400)	9,053	20,511	2,461	22,972 b
	44,149	(23,729)				

A Revenue was calculated by accumulating the total project revenue earned for each year based on the number and price of each lot sold. This number was then adjusted 25% to account for two years of inflation.

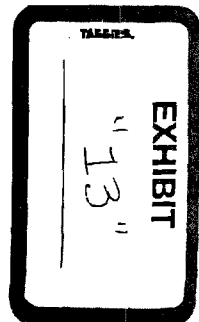
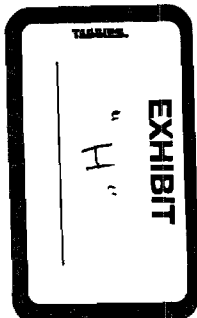
B Development Costs were calculated by accumulating the total estimated costs (based on an Engineer's estimate) for each year based on the total number of lots that were to be developed. This number was then adjusted 25% to account for two years of Inflation.

C Interest was calculated using a reasonable interest rate of 12%. After year four, one would note that the development project starting accumulating available funds that could be used for other projects and disbursements, therefore, no financing was needed.

a Note that Development Costs are significantly high in comparison to revenue. This is due to offsite development costs that occur in the first year. It has been estimated that there will be approximately \$1,568,000 in offsite development costs credited to year one.

b This line accounts for the sale of 31 acres of commercial property @ \$7 per square foot. There is a total of 43,560 square feet in one acre, therefore, (31 acres * 43,560 sq. ft. * \$7 per/acre) = \$9,453,520 in total sales. Development costs in this case were based on estimates for the cost of dry utilities, engineering fees, and city fees.

527



Southern Hills Development - Option 2 - Division #2a
 Engineer's Estimate
 29-Nov-06



Voice: (208) 234-0110 • Fax: (208) 234-0111 • www.rmes.biz

ISPE #	ITEM	UNIT	QUANT	UNIT PRICE	TOTAL
	EARTHWORK				
201	Clear & Grub	AC	7.5	\$ 3,000.00	\$ 22,500.00
202	Excavation	CY	11,500	\$ 4.00	\$ 46,000.00
	WATER				
401-C1	8" Class 50 Ductile Iron Water Line	LF	2,205	\$ 26.00	\$ 57,330.00
401-C1	12" Class 50 Ductile Iron Water Line	LF	5,482	\$ 40.00	\$ 219,298.80
402-C	8" Resilient Seat Gate Valve & Riser	EA	10	\$ 1,200.00	\$ 12,000.00
402-D	12" Resilient Seat Gate Valve & Riser	EA	6.5	\$ 1,600.00	\$ 10,400.00
403	Fire Hydrant	EA	4.5	\$ 2,500.00	\$ 11,250.00
404-A	1" Single Water Service	EA	3	\$ 1,700.00	\$ 5,100.00
404-B	1" Double Water Service	EA	22.5	\$ 2,200.00	\$ 49,500.00
405	PRV	EA	2.5	\$ 15,000.00	\$ 37,500.00
	SEWER				
501-A	8" SDR-35 PVC Sewer Line	EA	2,650	\$ 25.00	\$ 66,250.00
502	Sanitary Sewer Manhole	EA	9.5	\$ 2,000.00	\$ 19,000.00
504	4" Sewer Service	EA	43	\$ 900.00	\$ 38,700.00
	STORM WATER				
601-B	12" HDPE Storm Line	LF	2965	\$ 22.00	\$ 65,230.00
	Pond Structure	EA	0.5	\$ 10,000.00	\$ 5,000.00
602-A	Storm Drain Manhole	EA	9.5	\$ 1,500.00	\$ 14,250.00
602-B	Storm Drain Catch Basin	EA	12.5	\$ 1,500.00	\$ 18,750.00
	CONCRETE				
706-A	Standard 6" Curb and Gutter	LF	5,303	\$ 12.50	\$ 66,287.50
706-E	4' Sidewalk	SF	4,205	\$ 3.50	\$ 14,717.15
	ROADWAY				
810	Plant Mix Asphalt Pavement	SF	140,550	\$ 1.65	\$ 231,907.50
810	Roadway Geotextile	SF	140,550	\$ 0.15	\$ 21,082.50
	MISC.				
1003	Temporary "V" Ditch Berm	LS	1	\$ 1,500.00	\$ 1,500.00
1005	Silt Fence	LF	1000	\$ 2.00	\$ 2,000.00
1300	Re-Vegetation	AC	1.5	\$ 1,500.00	\$ 2,250.00
SP-3	Misc. Erosion Cntrl. Incl. Staging Area	LS	1	\$ 2,000.00	\$ 2,000.00
1002-E	Stabilized Entrance	EA	1	\$ 750.00	\$ 750.00
2010	Mobilization	LS	1	\$ 2,000.00	\$ 2,000.00
SP-1	Construction Permits	LS	1	\$ 750.00	\$ 750.00
SP-2	Materials Testing	LS	1	\$ 2,500.00	\$ 2,500.00
2060-A	Mail Box Unit	LS	2	\$ 2,000.00	\$ 4,000.00
SUB-TOTAL					\$ 1,049,803.45

City Entitlement Cont.	-
City Water Right Investment	-
Water Tank Investment	-
Development	\$ 1,049,803.45
Dry Utilities	\$ 80,000.00
Engineering	\$ 137,500.00
City Fees	\$ 12,500.00

Total Estimated Costs \$ 1,279,803.45

Total number of Lots: 43

Southern Hills Development - Option 2 - Division #2b
 Engineer's Estimate
 29-Nov-06



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ISPE #	ITEM	UNIT	QUANT	UNIT PRICE	TOTAL
	EARTHWORK				
201	Clear & Grub	AC	7.5	\$ 3,000.00	\$ 22,500.00
202	Excavation	CY	11,500	\$ 4.00	\$ 46,000.00
	WATER				
401-C1	8" Class 50 Ductile Iron Water Line	LF	2,205	\$ 26.00	\$ 57,330.00
401-C1	12" Class 50 Ductile Iron Water Line	LF	5,482	\$ 40.00	\$ 219,298.80
402-C	8" Resilient Seat Gate Valve & Riser	EA	10	\$ 1,200.00	\$ 12,000.00
402-D	12" Resilient Seat Gate Valve & Riser	EA	6.5	\$ 1,600.00	\$ 10,400.00
403	Fire Hydrant	EA	4.5	\$ 2,500.00	\$ 11,250.00
404-A	1" Single Water Service	EA	3	\$ 1,700.00	\$ 5,100.00
404-B	1" Double Water Service	EA	22.5	\$ 2,200.00	\$ 49,500.00
405	PRV	EA	2.5	\$ 15,000.00	\$ 37,500.00
450	500,000 Gallon Reservoir	EA	1	\$ -	\$ -
455	Culinary Water Booster	EA	1	\$ -	\$ -
	SEWER				
501-A	8" SDR-35 PVC Sewer Line	EA	2,650	\$ 25.00	\$ 66,250.00
502	Sanitary Sewer Manhole	EA	9.5	\$ 2,000.00	\$ 19,000.00
504	4" Sewer Service	EA	43	\$ 900.00	\$ 38,700.00
	STORM WATER				
601-B	12" HDPE Storm Line	LF	2965	\$ 22.00	\$ 65,230.00
	Pond Structure	EA	0.5	\$ 10,000.00	\$ 5,000.00
602-A	Storm Drain Manhole	EA	9.5	\$ 1,500.00	\$ 14,250.00
602-B	Storm Drain Catch Basin	EA	12.5	\$ 1,500.00	\$ 18,750.00
	CONCRETE				
706-A	Standard 6" Curb and Gutter	LF	5,303	\$ 12.50	\$ 66,287.50
706-E	4' Sidewalk	SF	4,205	\$ 3.50	\$ 14,717.15
	ROADWAY				
810	Plant Mix Asphalt Pavement	SF	140,550	\$ 1.65	\$ 231,907.50
810	Roadway Geotextile	SF	140,550	\$ 0.15	\$ 21,082.50
	MISC.				
1003	Temporary "V" Ditch Berm	LS	1	\$ 1,500.00	\$ 1,500.00
1005	Silt Fence	LF	1000	\$ 2.00	\$ 2,000.00
1300	Re-Vegetation	AC	1.5	\$ 1,500.00	\$ 2,250.00
SP-3	Misc. Erosion Cntrl, Incl. Staging Area	LS	1	\$ 2,000.00	\$ 2,000.00
1002-E	Stabilized Entrance	EA	1	\$ 750.00	\$ 750.00
2010	Mobilization	LS	1	\$ 2,000.00	\$ 2,000.00
SP-1	Construction Permits	LS	1	\$ 750.00	\$ 750.00
SP-2	Materials Testing	LS	1	\$ 2,500.00	\$ 2,500.00
2060-A	Mail Box Unit	LS	2	\$ 2,000.00	\$ 4,000.00
SUB-TOTAL					\$ 1,049,803.45

City Entitlement Cont.	\$ -
City Water Right Investment	\$ -
Water Tank Investment	\$ -
Development	\$ 1,049,803.45
Dry Utilities	\$ 80,000.00
Engineering	\$ 137,500.00
City Fees	\$ 12,500.00

Total Estimated Costs \$ 1,279,803.45

Total number of Lots: 43

Southern Hills Development - Option 2 - Division #3
 Engineer's Estimate
 29-Nov-06



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ISPE #	ITEM	UNIT	QUANT	UNIT PRICE	TOTAL
EARTHWORK					
201	Clear & Grub	AC	7	\$ 3,000.00	\$ 21,000.00
202	Excavation	CY	15,000	\$ 4.00	\$ 60,000.00
WATER					
401-C1	8" Class 50 Ductile Iron Water Line	LF	1,323	\$ 26.00	\$ 34,398.00
401-C1	12" Class 50 Ductile Iron Water Line	LF	1,954	\$ 40.00	\$ 78,160.00
402-C	8" Resilient Seat Gate Valve & Riser	EA	10	\$ 1,000.00	\$ 10,000.00
403	Fire Hydrant	EA	3	\$ 2,500.00	\$ 7,500.00
404-A	1" Single Water Service	EA	1	\$ 1,700.00	\$ 1,700.00
404-B	1" Double Water Service	EA	22	\$ 2,200.00	\$ 48,400.00
405	PRV	EA	1	\$ 15,000.00	\$ 15,000.00
SEWER					
501-A	8" SDR-35 PVC Sewer Line	EA	1,800	\$ 25.00	\$ 45,000.00
502	Sanitary Sewer Manhole	EA	9	\$ 2,000.00	\$ 18,000.00
504	4" Sewer Service	EA	45	\$ 900.00	\$ 40,500.00
STORM WATER					
601-B	12" HDPE Storm Line	LF	1800	\$ 22.00	\$ 39,600.00
602-A	Storm Drain Manhole	EA	9	\$ 1,500.00	\$ 13,500.00
602-B	Storm Drain Catch Basin	EA	14	\$ 1,500.00	\$ 21,000.00
CONCRETE					
706-A	Standard 6" Curb and Gutter	LF	3,600	\$ 12.50	\$ 45,000.00
706-E	4' Sidewalk	SF	759	\$ 3.50	\$ 2,657.97
ROADWAY					
810	Plant Mix Asphalt Pavement	SF	115,000	\$ 1.65	\$ 189,750.00
810	Roadway Geotextile	SF	115,000	\$ 0.15	\$ 17,250.00
MISC.					
1003	Temporary "V" Ditch Berm	LS	1	\$ 4,000.00	\$ 4,000.00
1005	Silt Fence	LF	1000	\$ 2.00	\$ 2,000.00
1300	Re-Vegetation	AC	3.0	\$ 1,500.00	\$ 4,500.00
SP-3	Misc. Erosion Cntrl, Incl. Staging Area	LS	1	\$ 5,000.00	\$ 5,000.00
1002-E	Stabilized Entrance	EA	1	\$ 1,500.00	\$ 1,500.00
2010	Mobilization	LS	1	\$ 4,000.00	\$ 4,000.00
SP-1	Construction Permits	LS	1	\$ 1,500.00	\$ 1,500.00
SP-2	Materials Testing	LS	1	\$ 8,000.00	\$ 8,000.00
2060-A	Mail Box Unit	LS	3	\$ 2,000.00	\$ 6,000.00
SUB-TOTAL 1					\$ 744,915.97

City Water Right Investment	\$ -
Water Tank Investment	\$ -
Development	\$ 744,915.97
Dry Utilities	\$ 60,000.00
Engineering	\$ 58,500.00
City Fees	\$ 15,000.00
SUB-TOTAL 1	

Total Estimated Costs \$ 878,415.97

Total number of Lots: 45

Southern Hills Development - Option 2 - Division #4a
 Engineer's Estimate
 29-Nov-06

40%

RMES
 Rocky Mountain Engineering & Surveying
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ISPE #	ITEM	UNIT	QUANT	UNIT PRICE	TOTAL
	EARTHWORK				
201	Clear & Grub	AC	6.2	\$ 3,000.00	\$ 18,600.00
202	Excavation	CY	20,000	\$ 4.00	\$ 80,000.00
	WATER				
401-C1	8" Class 50 Ductile Iron Water Line	LF	1,607	\$ 26.00	\$ 41,776.80
402-C	8" Resilient Seat Gate Valve & Riser	EA	4.8	\$ 1,200.00	\$ 5,760.00
405	PRV	EA	0.4	\$ 15,000.00	\$ 6,000.00
403	Fire Hydrant	EA	2	\$ 2,500.00	\$ 5,000.00
	Large Water Service	EA	1.6	\$ 2,200.00	\$ 3,520.00
404-A	1" Single Water Service	EA	1.6	\$ 1,700.00	\$ 2,720.00
404-B	1" Double Water Service	EA	14.8	\$ 2,200.00	\$ 32,560.00
	SEWER				
501-A	8" SDR-35 PVC Sewer Line	EA	2,120	\$ 25.00	\$ 53,000.00
	Large Sewer Service	EA	2	\$ 1,500.00	\$ 2,400.00
502	Sanitary Sewer Manhole	EA	17.6	\$ 2,000.00	\$ 35,200.00
504	4" Sewer Service	EA	31.2	\$ 900.00	\$ 28,080.00
	STORM WATER				
601-B	12" HDPE Storm Line	LF	2440	\$ 22.00	\$ 53,680.00
	Pond Structure	EA	0.8	\$ 10,000.00	\$ 8,000.00
602-A	Storm Drain Manhole	EA	15.6	\$ 1,500.00	\$ 23,400.00
602-B	Storm Drain Catch Basin	EA	11.6	\$ 1,500.00	\$ 17,400.00
	CONCRETE				
706-A	Standard 6" Curb and Gutter	LF	4,400	\$ 12.50	\$ 55,000.00
706-E	4' Sidewalk	SF	800	\$ 3.50	\$ 2,800.00
	ROADWAY				
810	Plant Mix Asphalt Pavement	SF	74,800	\$ 1.65	\$ 123,420.00
810	Roadway Geotextile	SF	74,800	\$ 0.15	\$ 11,220.00
	MISC.				
1003	Temporary "V" Ditch Berm	LS	1	\$ 2,000.00	\$ 2,000.00
1005	Silt Fence	LF	800	\$ 2.00	\$ 1,600.00
1300	Re-Vegetation	AC	0.8	\$ 1,500.00	\$ 1,200.00
SP-3	Misc. Erosion Cntrl, Incl. Staging Area	LS	1	\$ 2,000.00	\$ 2,000.00
1002-E	Stabilized Entrance	EA	1	\$ 600.00	\$ 600.00
2010	Mobilization	LS	1	\$ 1,600.00	\$ 1,600.00
SP-1	Construction Permits	LS	1	\$ 600.00	\$ 600.00
SP-2	Materials Testing	LS	1	\$ 4,000.00	\$ 4,000.00
2060-A	Mail Box Unit	LS	2	\$ 2,000.00	\$ 4,000.00
SUB-TOTAL					\$ 627,136.80

City Water Right Investment	\$	-
Water Tank Investment	\$	-
Development	\$	627,136.80
Dry Utilities	\$	40,000.00
Engineering	\$	33,120.00
City Fees	\$	10,000.00

Total Estimated Costs \$ 710,256.80

Total number of Townhome Units: 62

Southern Hills Development - Option 2 - Division #4b
 Engineer's Estimate
 29-Nov-06

60%



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ISPE #	ITEM	UNIT	QUANT	UNIT PRICE	TOTAL
	EARTHWORK				
201	Clear & Grub	AC	9.3	\$ 3,000.00	\$ 27,900.00
202	Excavation	CY	30,000	\$ 4.00	\$ 120,000.00
	WATER				
401-C1	8" Class 50 Ductile Iron Water Line	LF	2,410	\$ 26.00	\$ 62,665.20
402-C	8" Resilient Seat Gate Valve & Riser	EA	7.2	\$ 1,200.00	\$ 8,640.00
405	PRV	EA	0.6	\$ 15,000.00	\$ 9,000.00
403	Fire Hydrant	EA	3	\$ 2,500.00	\$ 7,500.00
	Large Water Service	EA	2.4	\$ 2,200.00	\$ 5,280.00
404-A	1" Single Water Service	EA	2.4	\$ 1,700.00	\$ 4,080.00
404-B	1" Double Water Service	EA	22.2	\$ 2,200.00	\$ 48,840.00
	SEWER				
501-A	8" SDR-35 PVC Sewer Line	EA	3,180	\$ 25.00	\$ 79,500.00
	Large Sewer Service	EA	2	\$ 1,500.00	\$ 3,000.00
502	Sanitary Sewer Manhole	EA	26.4	\$ 2,000.00	\$ 52,800.00
504	4" Sewer Service	EA	46.8	\$ 900.00	\$ 42,120.00
	STORM WATER				
601-B	12" HDPE Storm Line	LF	3660	\$ 22.00	\$ 80,520.00
	Pond Structure	EA	1.2	\$ 10,000.00	\$ 12,000.00
602-A	Storm Drain Manhole	EA	23.4	\$ 1,500.00	\$ 35,100.00
602-B	Storm Drain Catch Basin	EA	17.4	\$ 1,500.00	\$ 26,100.00
	CONCRETE				
706-A	Standard 6" Curb and Gutter	LF	6,600	\$ 12.50	\$ 82,500.00
706-E	4' Sidewalk	SF	1,200	\$ 3.50	\$ 4,200.00
	ROADWAY				
810	Plant Mix Asphalt Pavement	SF	112,200	\$ 1.65	\$ 185,130.00
810	Roadway Geotextile	SF	112,200	\$ 0.15	\$ 16,830.00
	MISC.				
1003	Temporary "V" Ditch Berm	LS	1	\$ 3,000.00	\$ 3,000.00
1005	Silt Fence	LF	1200	\$ 2.00	\$ 2,400.00
1300	Re-Vegetation	AC	1.2	\$ 1,500.00	\$ 1,800.00
SP-3	Misc. Erosion Cntrl. Incl. Staging Area	LS	1	\$ 5,000.00	\$ 3,000.00
1002-E	Stabilized Entrance	EA	1	\$ 900.00	\$ 900.00
2010	Mobilization	LS	1	\$ 2,400.00	\$ 2,400.00
SP-1	Construction Permits	LS	1	\$ 900.00	\$ 900.00
SP-2	Materials Testing	LS	1	\$ 6,000.00	\$ 6,000.00
2060-A	Mail Box Unit	LS	3	\$ 2,000.00	\$ 6,000.00
SUB-TOTAL 1					\$ 940,705.20

City Water Right Investment	\$	-
Water Tank Investment	\$	-
Development	\$	940,705.20
Dry Utilities	\$	60,000.00
Engineering	\$	49,680.00
City Fees	\$	15,000.00

Total Estimated Costs \$ 1,065,385.20

Total number of Lots: 16

Southern Hills Development - Option 2 - Division #5a
 Engineer's Estimate
 29-Nov-06

75%



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ISPE #	ITEM	UNIT	QUANT	UNIT PRICE	TOTAL
	EARTHWORK				
201	Clear & Grub	AC	6.75	\$ 3,000.00	\$ 20,250.00
202	Excavation	CY	27,000	\$ 4.00	\$ 108,000.00
	WATER				
401-C1	8" Class 50 Ductile Iron Water Line	LF	1,800	\$ 26.00	\$ 46,800.00
402-C	8" Resilient Seat Gate Valve & Riser	EA	5.25	\$ 1,200.00	\$ 6,300.00
403	Fire Hydrant	EA	1.5	\$ 2,500.00	\$ 3,750.00
	Large Water Service	EA	0.75	\$ 2,500.00	\$ 1,875.00
404-A	1" Single Water Service	EA	2.25	\$ 1,700.00	\$ 3,825.00
404-B	1" Double Water Service	EA	10.5	\$ 2,200.00	\$ 23,100.00
	SEWER				
501-A	8" SDR-35 PVC Sewer Line	EA	1,650	\$ 25.00	\$ 41,250.00
	Large Sewer Service	EA	3	\$ 2,000.00	\$ 6,000.00
502	Sanitary Sewer Manhole	EA	12	\$ 2,000.00	\$ 24,000.00
504	4" Sewer Service	EA	23.25	\$ 900.00	\$ 20,925.00
	STORM WATER				
601-B	12" HDPE Storm Line	LF	1500	\$ 22.00	\$ 33,000.00
	Pond Structure	EA	0.75	\$ 10,000.00	\$ 7,500.00
602-A	Storm Drain Manhole	EA	6	\$ 1,500.00	\$ 9,000.00
602-B	Storm Drain Catch Basin	EA	10.5	\$ 1,500.00	\$ 15,750.00
	CONCRETE				
706-A	Standard 6" Curb and Gutter	LF	3,375	\$ 12.50	\$ 42,187.50
706-E	4' Sidewalk	SF	1,950	\$ 3.50	\$ 6,825.00
	ROADWAY				
810	Plant Mix Asphalt Pavement	SF	54,750	\$ 1.65	\$ 90,337.50
810	Roadway Geotextile	SF	54,750	\$ 0.15	\$ 8,212.50
	MISC.				
1003	Temporary "V" Ditch Berm	LS	0.75	\$ 4,000.00	\$ 3,000.00
1005	Silt Fence	LF	750	\$ 2.00	\$ 1,500.00
1300	Re-Vegetation	AC	3.8	\$ 1,500.00	\$ 5,625.00
SP-3	Misc. Erosion Cntrl, Incl. Staging Area	LS	1	\$ 5,000.00	\$ 3,750.00
1002-E	Stabilized Entrance	EA	1	\$ 1,500.00	\$ 1,125.00
2010	Mobilization	LS	1	\$ 4,000.00	\$ 3,000.00
SP-1	Construction Permits	LS	1	\$ 1,500.00	\$ 1,125.00
SP-2	Materials Testing	LS	1	\$ 10,000.00	\$ 7,500.00
2060-A	Mail Box Unit	LS	4	\$ 2,000.00	\$ 7,500.00
				SUB-TOTAL	\$ 553,012.50

City Water Right Investment	\$	-
Water Tank Investment	\$	-
Development	\$	553,012.50
Dry Utilities	\$	75,000.00
Engineering	\$	66,225.00
City Fees	\$	15,000.00

Total Estimated Costs \$ 709,237.50

Total number of Lots: 31

Southern Hills Development - Option 2 - Division #5b
 Engineer's Estimate
 29-Nov-06

25%



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ISPE #	ITEM	UNIT	QUANT	UNIT PRICE	TOTAL
	EARTHWORK				
201	Clear & Grub	AC	2.25	\$ 3,000.00	\$ 6,750.00
202	Excavation	CY	9,000	\$ 4.00	\$ 36,000.00
	WATER				
401-C1	8" Class 50 Ductile Iron Water Line	LF	600	\$ 26.00	\$ 15,600.00
402-C	8" Resilient Seat Gate Valve & Riser	EA	1.75	\$ 1,200.00	\$ 2,100.00
403	Fire Hydrant	EA	0.5	\$ 2,500.00	\$ 1,250.00
	Large Water Service	EA	0.25	\$ 2,500.00	\$ 625.00
404-A	1" Single Water Service	EA	0.75	\$ 1,700.00	\$ 1,275.00
404-B	1" Double Water Service	EA	3.5	\$ 2,200.00	\$ 7,700.00
	SEWER				
501-A	8" SDR-35 PVC Sewer Line	EA	550	\$ 25.00	\$ 13,750.00
	Large Sewer Service	EA	1	\$ 2,000.00	\$ 2,000.00
502	Sanitary Sewer Manhole	EA	4	\$ 2,000.00	\$ 8,000.00
504	4" Sewer Service	EA	7.75	\$ 900.00	\$ 6,975.00
	STORM WATER				
601-B	12" HDPE Storm Line	LF	500	\$ 22.00	\$ 11,000.00
	Pond Structure	EA	0.25	\$ 10,000.00	\$ 2,500.00
602-A	Storm Drain Manhole	EA	2	\$ 1,500.00	\$ 3,000.00
602-B	Storm Drain Catch Basin	EA	3.5	\$ 1,500.00	\$ 5,250.00
	CONCRETE				
706-A	Standard 6" Curb and Gutter	LF	1,125	\$ 12.50	\$ 14,062.50
706-E	4" Sidewalk	SF	650	\$ 3.50	\$ 2,275.00
	ROADWAY				
810	Plant Mix Asphalt Pavement	SF	18,250	\$ 1.65	\$ 30,112.50
810	Roadway Geotextile	SF	18,250	\$ 0.15	\$ 2,737.50
	MISC.				
1003	Temporary "V" Ditch Berm	LS	0.25	\$ 4,000.00	\$ 1,000.00
1005	Silt Fence	LF	250	\$ 2.00	\$ 500.00
1300	Re-Vegetation	AC	1.3	\$ 1,500.00	\$ 1,875.00
SP-3	Misc. Erosion Cntrl, Incl. Staging Area	LS	0	\$ 5,000.00	\$ 1,250.00
1002-E	Stabilized Entrance	EA	0	\$ 1,500.00	\$ 375.00
2010	Mobilization	LS	0	\$ 4,000.00	\$ 1,000.00
SP-1	Construction Permits	LS	0	\$ 1,500.00	\$ 375.00
SP-2	Materials Testing	LS	0	\$ 10,000.00	\$ 2,500.00
2060-A	Mail Box Unit	LS	1	\$ 2,000.00	\$ 2,500.00
SUB-TOTAL					\$ 184,337.50

City Water Right Investment	\$	-
Water Tank Investment	\$	-
Development	\$	184,337.50
Dry Utilities	\$	25,000.00
Engineering	\$	22,075.00
City Fees	\$	5,000.00
SUB-TOTAL		

Total Estimated Costs \$ 236,412.50

Total number of 12 Plex Units: 60

Southern Hills Development - Option 2 - Division #6
 Engineer's Estimate
 29-Nov-06



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ISPE #	ITEM	UNIT	QUANT	UNIT PRICE	TOTAL
	EARTHWORK				
201	Clear & Grub	AC	5.31	\$ 3,000.00	\$ 15,930.00
202	Excavation	CY	27,000	\$ 4.00	\$ 108,000.00
	WATER				
401-C1	8" Class 50 Ductile Iron Water Line	LF	1,587	\$ 26.00	\$ 41,270.84
402-C	8" Resilient Seat Gate Valve & Riser	EA	6	\$ 1,200.00	\$ 7,200.00
405	PRV	EA	1	\$ 15,000.00	\$ 15,000.00
403	Fire Hydrant	EA	2	\$ 2,500.00	\$ 5,000.00
	Large Water Service	EA	4	\$ 2,200.00	\$ 8,800.00
404-A	1" Single Water Service	EA	0	\$ 1,700.00	\$ -
404-B	1" Double Water Service	EA	22	\$ 2,200.00	\$ 48,400.00
	SEWER				
501-A	8" SDR-35 PVC Sewer Line	EA	1,610	\$ 25.00	\$ 40,250.00
	Large Sewer Service	EA	4	\$ 2,000.00	\$ 8,000.00
502	Sanitary Sewer Manhole	EA	8	\$ 2,000.00	\$ 16,000.00
504	4" Sewer Service	EA	44	\$ 900.00	\$ 39,600.00
	STORM WATER				
601-B	12" HDPE Storm Line	LF	1970	\$ 22.00	\$ 43,340.00
	Pond Structure	EA	0	\$ 10,000.00	\$ -
602-A	Storm Drain Manhole	EA	8	\$ 1,500.00	\$ 12,000.00
602-B	Storm Drain Catch Basin	EA	6	\$ 1,500.00	\$ 9,000.00
	CONCRETE				
706-A	Standard 6" Curb and Gutter	LF	3,485	\$ 12.50	\$ 43,568.00
706-E	4' Sidewalk	SF	0	\$ 3.50	\$ -
	ROADWAY				
810	Plant Mix Asphalt Pavement	SF	31,890	\$ 1.65	\$ 52,618.50
810	Roadway Geotextile	SF	31,890	\$ 0.15	\$ 4,783.50
	MISC.				
1003	Temporary "V" Ditch Berm	EA	1	\$ 4,000.00	\$ 4,000.00
1005	Silt Fence	LF	2000	\$ 2.00	\$ 4,000.00
1300	Re-Vegetation	AC	2.0	\$ 1,500.00	\$ 3,000.00
SP-3	Misc. Erosion Cntrl, Incl. Staging Area	LS	1	\$ 5,000.00	\$ 5,000.00
1002-E	Stabilized Entrance	EA	1	\$ 1,500.00	\$ 1,500.00
2010	Mobilization	LS	1	\$ 4,000.00	\$ 4,000.00
SP-1	Construction Permits	LS	1	\$ 1,500.00	\$ 1,500.00
SP-2	Materials Testing	LS	1	\$ 10,000.00	\$ 10,000.00
2060-A	Mail Box Unit	LS	5	\$ 2,000.00	\$ 10,000.00
SUB-TOTAL					\$ 561,760.84

City Water Right Investment	0
Water Tank Investment	0
Development	561760.84
Dry Utilities	80000
Engineering	87600
City Fees	20000

Total Estimated Costs \$ 749,360.84

Total number of Lots: 4
 Total number of Townhome Units: 44
 Total number of 12 Plex Units: 48

Southern Hills Development - Option 2 - Division #7
Engineers Estimate
29-Nov-06



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ISPE #	ITEM	UNIT	QUANT	UNIT PRICE	TOTAL
	EARTHWORK				
201	Clear & Grub	AC	10.86	\$ 3,000.00	\$ 32,580.00
202	Excavation	CY	90,000	\$ 4.00	\$ 360,000.00
	WATER				
401-C1	8" Class 50 Ductile Iron Water Line	LF	3498	\$ 26.00	\$ 90,958.14
402-C	8" Resilient Seat Gate Valve & Riser	EA	12	\$ 1,200.00	\$ 14,400.00
405	PRV	EA	2	\$ 15,000.00	\$ 30,000.00
403	Fire Hydrant	EA	2	\$ 2,500.00	\$ 5,000.00
	Large Water Service	EA	0	\$ 2,200.00	\$ -
404-A	1" Single Water Service	EA	1	\$ 1,700.00	\$ 1,700.00
404-B	1" Double Water Service	EA	26	\$ 2,200.00	\$ 57,200.00
	SEWER				
501-A	8" SDR-35 PVC Sewer Line	EA	2,778	\$ 25.00	\$ 69,450.00
	Large Sewer Service	EA	0	\$ 2,000.00	\$ -
502	Sanitary Sewer Manhole	EA	16	\$ 2,000.00	\$ 32,000.00
504	4" Sewer Service	EA	52	\$ 900.00	\$ 46,800.00
	STORM WATER				
601-B	12" HDPE Storm Line	LF	3200	\$ 22.00	\$ 70,400.00
	Pond Structure	EA	1	\$ 10,000.00	\$ 10,000.00
602-A	Storm Drain Manhole	EA	16	\$ 1,500.00	\$ 24,000.00
602-B	Storm Drain Catch Basin	EA	15	\$ 1,500.00	\$ 22,500.00
	CONCRETE				
706-A	Standard 6" Curb and Gutter	LF	6794	\$ 12.50	\$ 84,923.75
706-E	4' Sidewalk	SF	4640	\$ 3.50	\$ 16,240.00
	ROADWAY				
810	Plant Mix Asphalt Pavement	SF	125,350	\$ 1.65	\$ 206,827.24
810	Roadway Geotextile	SF	125,350	\$ 0.15	\$ 18,802.48
	MISC:				
1003	Temporary "V" Ditch Berm	EA	2	\$ 4,000.00	\$ 8,000.00
1005	Silt Fence	LF	2000	\$ 2.00	\$ 4,000.00
1300	Re-Vegetation	AC	2.0	\$ 1,500.00	\$ 3,000.00
SP-3	Misc. Erosion Cntrl, Incl. Staging Area	LS	1	\$ 5,000.00	\$ 5,000.00
1002-E	Stabilized Entrance	EA	1	\$ 1,500.00	\$ 1,500.00
2010	Mobilization	LS	1	\$ 4,000.00	\$ 4,000.00
SP-1	Construction Permits	LS	1	\$ 1,500.00	\$ 1,500.00
SP-2	Materials Testing	LS	1	\$ 8,000.00	\$ 8,000.00
2060-A	Mail Box Unit	LS	3	\$ 2,000.00	\$ 6,000.00
SUB-TOTAL					\$ 1,234,781.60

City Water Right Investment	\$ -
Water Tank Investment	\$ -
Development	\$ 1,234,781.60
Dry Utilities	\$ 80,000.00
Engineering	\$ 62,200.00
City Fees	\$ 20,000.00

Total Estimated Costs \$ 1,396,981.60

Total number of Lots: 34
Total number of Townhome Units: 18

Southern Hills Development - Option 2 - Division #8
Engineers Estimate
8-Feb-06



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ISPE #	ITEM	UNIT	QUANT	UNIT PRICE	TOTAL
EARTHWORK					
201	Clear & Grub	AC	5.51	\$ 3,000.00	\$ 16,530.00
202	Excavation	CY	30,000	\$ 4.00	\$ 120,000.00
WATER					
401-C1	8" Class 50 Ductile Iron Water Line	LF	1898	\$ 26.00	\$ 49,358.92
402-C	8" Resilient Seat Gate Valve & Riser	EA	3	\$ 1,200.00	\$ 3,600.00
405	PRV	EA	1	\$ 15,000.00	\$ 15,000.00
403	Fire Hydrant	EA	3	\$ 2,500.00	\$ 7,500.00
	Large Water Service	EA	0	\$ 2,200.00	\$ -
404-A	1" Single Water Service	EA	1	\$ 1,700.00	\$ 1,700.00
404-B	1" Double Water Service	EA	30	\$ 2,200.00	\$ 66,000.00
SEWER					
501-A	8" SDR-35 PVC Sewer Line	EA	1,871	\$ 25.00	\$ 46,786.50
	Large Sewer Service	EA	0	\$ 900.00	\$ -
502	Sanitary Sewer Manhole	EA	8	\$ 2,000.00	\$ 16,000.00
504	4" Sewer Service	EA	61	\$ 900.00	\$ 54,900.00
STORM WATER					
601-B	12" HDPE Storm Line	LF	1871	\$ 22.00	\$ 41,162.00
	Pond Structure	EA	0	\$ 10,000.00	\$ -
602-A	Storm Drain Manhole	EA	8	\$ 1,500.00	\$ 12,000.00
602-B	Storm Drain Catch Basin	EA	7	\$ 1,500.00	\$ 10,500.00
CONCRETE					
706-A	Standard 6" Curb and Gutter	LF	4237	\$ 12.50	\$ 52,968.50
706-E	4" Sidewalk	SF	0	\$ 3.50	\$ -
ROADWAY					
810	Plant Mix Asphalt Pavement	SF	68,183	\$ 1.65	\$ 112,501.82
810	Roadway Geotextile	SF	68,183	\$ 0.15	\$ 10,227.44
MISC.					
1003	Temporary "V" Ditch Berm	EA	2	\$ 4,000.00	\$ 8,000.00
1005	Silt Fence	LF	2000	\$ 2.00	\$ 4,000.00
1300	Re-Vegetation	AC	2.0	\$ 1,500.00	\$ 3,000.00
SP-3	Misc. Erosion Cntrl, Incl. Staging Area	LS	1	\$ 5,000.00	\$ 5,000.00
1002-E	Stabilized Entrance	EA	1	\$ 1,500.00	\$ 1,500.00
2010	Mobilization	LS	1	\$ 4,000.00	\$ 4,000.00
SP-1	Construction Permits	LS	1	\$ 1,500.00	\$ 1,500.00
SP-2	Materials Testing	LS	1	\$ 5,000.00	\$ 5,000.00
2060-A	Mail Box Unit	LS	3	\$ 2,000.00	\$ 6,000.00
SUB-TOTAL					\$ 674,735.18

City Water Right Investment	\$	-
Water Tank Investment	\$	-
Development	\$	674,735.18
Dry Utilities	\$	70,000.00
Engineering	\$	62,200.00
City Fees	\$	20,000.00

Total Estimated Costs \$ 826,935.18

Total number of Lots: 14
Total number of Townhome Units: 44

Southern Hills Development - Option 2 - Division #9a
 Engineers Estimate
 29-Nov-06

50%



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ISPE #	ITEM	UNIT	QUANT	UNIT PRICE	TOTAL
	EARTHWORK				
201	Clear & Grub	AC	6.255	\$ 3,000.00	\$ 18,675.00
202	Excavation	CY	29,000	\$ 4.00	\$ 116,000.00
	WATER				
401-C1	8" Class 50 Ductile Iron Water Line	LF	2017	\$ 26.00	\$ 52,446.42
402-C	8" Resilient Seat Gate Valve & Riser	EA	0	\$ 1,200.00	\$ -
	PRV	EA	0.5	\$ 15,000.00	\$ 7,500.00
403	Fire Hydrant	EA	3.5	\$ 2,500.00	\$ 8,750.00
	Large Water Service	EA	0	\$ 2,200.00	\$ -
404-A	1" Single Water Service	EA	5	\$ 1,700.00	\$ 8,500.00
404-B	1" Double Water Service	EA	21	\$ 2,200.00	\$ 46,200.00
	SEWER				
501-A	8" SDR-35 PVC Sewer Line	EA	2,017	\$ 25.00	\$ 50,425.00
	Large Sewer Service	EA	0	\$ 900.00	\$ -
502	Sanitary Sewer Manhole	EA	8	\$ 2,000.00	\$ 16,000.00
504	4" Sewer Service	EA	48.5	\$ 900.00	\$ 43,650.00
	STORM WATER				
601-B	12" HDPE Storm Line	LF	2437	\$ 22.00	\$ 53,619.50
	Pond Structure	EA	0	\$ 10,000.00	\$ -
602-A	Storm Drain Manhole	EA	8	\$ 1,500.00	\$ 12,000.00
602-B	Storm Drain Catch Basin	EA	10.5	\$ 1,500.00	\$ 15,750.00
	CONCRETE				
706-A	Standard 6" Curb and Gutter	LF	4229	\$ 12.50	\$ 52,839.06
706-E	4' Sidewalk	SF	0	\$ 3.50	\$ -
	ROADWAY				
810	Plant Mix Asphalt Pavement	SF	58,988	\$ 1.65	\$ 97,330.46
810	Roadway Geotextile	SF	58,988	\$ 0.15	\$ 8,848.22
	MISC.				
1003	Temporary "V" Ditch Berm	EA	1	\$ 4,090.00	\$ 4,090.00
1005	Silt Fence	LF	1000	\$ 2.00	\$ 2,000.00
1300	Re-Vegetation	AC	1.0	\$ 1,500.00	\$ 1,500.00
SP-3	Misc. Erosion Cntrl, Incl. Staging Area	LS	1	\$ 5,000.00	\$ 2,500.00
1002-E	Stabilized Entrance	EA	1	\$ 1,500.00	\$ 750.00
2010	Mobilization	LS	1	\$ 4,000.00	\$ 2,000.00
SP-1	Construction Permits	LS	1	\$ 1,500.00	\$ 750.00
SP-2	Materials Testing	LS	1	\$ 10,000.00	\$ 5,000.00
2060-A	Mail Box Unit	LS	3	\$ 2,000.00	\$ 5,000.00
SUB-TOTAL					\$ 632,123.67

City Water Right Investment	\$	-
Water Tank Investment	\$	-
Development	\$	632,123.67
Dry Utilities	\$	40,000.00
Engineering	\$	63,050.00
City Fees	\$	10,000.00

Total Estimated Costs \$ 745,173.67

Total number of Lots: 49

Southern Hills Development - Option 2 - Division #9b
Engineers Estimate
29-Nov-06

50%



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ISPE #	ITEM	UNIT	QUANT	UNIT PRICE	TOTAL
EARTHWORK					
201	Clear & Grub	AC	6.255	\$ 3,000.00	\$ 18,675.00
202	Excavation	CY	29,000	\$ 4.00	\$ 116,000.00
WATER					
401-C1	8" Class 50 Ductile Iron Water Line	LF	2017	\$ 26.00	\$ 52,446.42
402-C	8" Resilient Seat Gate Valve & Riser	EA	0	\$ 1,200.00	\$ -
	PRV	EA	0.5	\$ 15,000.00	\$ 7,500.00
403	Fire Hydrant	EA	3.5	\$ 2,500.00	\$ 8,750.00
	Large Water Service	EA	0	\$ 2,200.00	\$ -
404-A	1" Single Water Service	EA	5	\$ 1,700.00	\$ 8,500.00
404-B	1" Double Water Service	EA	21	\$ 2,200.00	\$ 46,200.00
SEWER					
501-A	8" SDR-35 PVC Sewer Line	EA	2,017	\$ 25.00	\$ 50,425.00
	Large Sewer Service	EA	0	\$ 900.00	\$ -
502	Sanitary Sewer Manhole	EA	8	\$ 2,000.00	\$ 16,000.00
504	4" Sewer Service	EA	48.5	\$ 900.00	\$ 43,650.00
STORM WATER					
601-B	12" HDPE Storm Line	LF	2437	\$ 22.00	\$ 53,619.50
	Pond Structure	EA	0	\$ 10,000.00	\$ -
602-A	Storm Drain Manhole	EA	8	\$ 1,500.00	\$ 12,000.00
602-B	Storm Drain Catch Basin	EA	10.5	\$ 1,500.00	\$ 15,750.00
CONCRETE					
706-A	Standard 6" Curb and Gutter	LF	4229	\$ 12.50	\$ 52,839.06
706-E	4' Sidewalk	SF	0	\$ 3.50	\$ -
ROADWAY					
810	Plant Mix Asphalt Pavement	SF	58,988	\$ 1.65	\$ 97,330.46
810	Roadway Geotextile	SF	58,988	\$ 0.15	\$ 8,848.22
MISC.					
1003	Temporary "V" Ditch Berm	EA	1	\$ 4,090.00	\$ 4,090.00
1005	Silt Fence	LF	1000	\$ 2.00	\$ 2,000.00
1300	Re-Vegetation	AC	1.0	\$ 1,500.00	\$ 1,500.00
SP-3	Misc. Erosion Cntrl, Incl. Staging Area	LS	1	\$ 5,000.00	\$ 2,500.00
1002-E	Stabilized Entrance	EA	1	\$ 1,500.00	\$ 750.00
2010	Mobilization	LS	1	\$ 4,000.00	\$ 2,000.00
SP-1	Construction Permits	LS	1	\$ 1,500.00	\$ 750.00
SP-2	Materials Testing	LS	1	\$ 10,000.00	\$ 5,000.00
2060-A	Mail Box Unit	LS	3	\$ 2,000.00	\$ 5,000.00
SUB-TOTAL					\$ 632,123.67

City Water Right Investment	\$	-
Water Tank Investment	\$	-
Development	\$	632,123.67
Dry Utilities	\$	40,000.00
Engineering	\$	63,050.00
City Fees	\$	10,000.00

Total Estimated Costs \$ 745,173.67

Total number of Lots: 49

Southern Hills Development - Option 2 - Division #10a
 Engineers Estimate
 29-Nov-06

50%



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ISPE #	ITEM	UNIT	QUANT	UNIT PRICE	TOTAL
	EARTHWORK				
201	Clear & Grub	AC	3.71	\$ 3,000.00	\$ 11,130.00
202	Excavation	CY	16,500	\$ 4.00	\$ 66,000.00
	WATER				
401-C1	8" Class 50 Ductile Iron Water Line	LF	651	\$ 26.00	\$ 16,926.00
402-C	8" Resilient Seat Gate Valve & Riser	EA	3.5	\$ 1,200.00	\$ 4,200.00
	PRV	EA	0	\$ 15,000.00	\$ -
403	Fire Hydrant	EA	3.5	\$ 2,500.00	\$ 8,750.00
	Large Water Service	EA	0	\$ 2,200.00	\$ -
404-A	1" Single Water Service	EA	2	\$ 1,700.00	\$ 3,400.00
404-B	1" Double Water Service	EA	15	\$ 2,200.00	\$ 33,000.00
	SEWER				
501-A	8" SDR-35 PVC Sewer Line	EA	1,385	\$ 25.00	\$ 34,625.00
	Large Sewer Service	EA	0	\$ 900.00	\$ -
502	Sanitary Sewer Manhole	EA	9.5	\$ 2,000.00	\$ 19,000.00
504	4" Sewer Service	EA	38	\$ 900.00	\$ 34,200.00
	STORM WATER				
601-B	12" HDPE Storm Line	LF	1685	\$ 22.00	\$ 37,070.00
	Pond Structure	EA	0	\$ 10,000.00	\$ -
602-A	Storm Drain Manhole	EA	9.5	\$ 1,500.00	\$ 14,250.00
602-B	Storm Drain Catch Basin	EA	7.5	\$ 1,500.00	\$ 11,250.00
	CONCRETE				
706-A	Standard 6" Curb and Gutter	LF	2914	\$ 12.50	\$ 36,427.63
706-E	4' Sidewalk	SF	0	\$ 3.50	\$ -
	ROADWAY				
810	Plant Mix Asphalt Pavement	SF	50,482	\$ 1.65	\$ 83,296.03
810	Roadway Geotextile	SF	50,482	\$ 0.15	\$ 7,572.37
	MISC.				
1003	Temporary "V" Ditch Berm	EA	1	\$ 3,999.98	\$ 3,999.98
1005	Silt Fence	LF	1000	\$ 2.00	\$ 2,000.00
1300	Re-Vegetation	AC	1.0	\$ 1,500.00	\$ 1,500.00
SP-3	Misc. Erosion Cntrl, Incl. Staging Area	LS	1	\$ 5,000.00	\$ 2,500.00
1002-E	Stabilized Entrance	EA	1	\$ 1,500.00	\$ 750.00
2010	Mobilization	LS	1	\$ 4,000.00	\$ 2,000.00
SP-1	Construction Permits	LS	1	\$ 1,500.00	\$ 750.00
SP-2	Materials Testing	LS	1	\$ 6,000.00	\$ 3,000.00
2060-A	Mail Box Unit	LS	2	\$ 2,000.00	\$ 4,000.00
SUB-TOTAL					\$ 441,597.00

City Water Right Investment	\$	-
Water Tank Investment	\$	-
Development	\$	441,597.00
Dry Utilities	\$	50,000.00
Engineering	\$	49,400.00
City Fees	\$	12,500.00

Total Estimated Costs \$ 553,497.00

Total number of Lots: 38

Southern Hills Development - Option 2 - Division #10b
 Engineers Estimate
 29-Nov-06



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ISPE #	ITEM	UNIT	QUANT	UNIT-PRICE	TOTAL
	EARTHWORK				
201	Clear & Grub	AC	3.71	\$ 3,000.00	\$ 11,130.00
202	Excavation	CY	16,500	\$ 4.00	\$ 66,000.00
	WATER				
401-C1	8" Class 50 Ductile Iron Water Line	LF	651	\$ 26.00	\$ 16,926.00
402-C	8" Resilient Seat Gate Valve & Riser	EA	3.5	\$ 1,200.00	\$ 4,200.00
	PRV	EA	0	\$ 15,000.00	\$ -
403	Fire Hydrant	EA	3.5	\$ 2,500.00	\$ 8,750.00
	Large Water Service	EA	0	\$ 2,200.00	\$ -
404-A	1" Single Water Service	EA	2	\$ 1,700.00	\$ 3,400.00
404-B	1" Double Water Service	EA	15	\$ 2,200.00	\$ 33,000.00
	SEWER				
501-A	8" SDR-35 PVC Sewer Line	EA	1,385	\$ 25.00	\$ 34,625.00
	Large Sewer Service	EA	0	\$ 900.00	\$ -
502	Sanitary Sewer Manhole	EA	9.5	\$ 2,000.00	\$ 19,000.00
504	4" Sewer Service	EA	38	\$ 900.00	\$ 34,200.00
	STORM WATER				
601-B	12" HDPE Storm Line	LF	1685	\$ 22.00	\$ 37,070.00
	Pond Structure	EA	0	\$ 10,000.00	\$ -
602-A	Storm Drain Manhole	EA	9.5	\$ 1,500.00	\$ 14,250.00
602-B	Storm Drain Catch Basin	EA	7.5	\$ 1,500.00	\$ 11,250.00
	CONCRETE				
706-A	Standard 6" Curb and Gutter	LF	2914	\$ 12.50	\$ 36,427.63
706-E	4' Sidewalk	SF	0	\$ 3.50	\$ -
	ROADWAY				
810	Plant Mix Asphalt Pavement	SF	50,482	\$ 1.65	\$ 83,296.03
810	Roadway Geotextile	SF	50,482	\$ 0.15	\$ 7,572.37
	MISC.				
1003	Temporary "V" Ditch Berm	EA	2	\$ 4,000.00	\$ 8,000.00
1005	Silt Fence	LF	2000	\$ 2.00	\$ 4,000.00
1300	Re-Vegetation	AC	2.0	\$ 1,500.00	\$ 3,000.00
SP-3	Misc. Erosion Cntrl, Incl. Staging Area	LS	1	\$ 5,000.00	\$ 5,000.00
1002-E	Stabilized Entrance	EA	1	\$ 1,500.00	\$ 1,500.00
2010	Mobilization	LS	1	\$ 4,000.00	\$ 4,000.00
SP-1	Construction Permits	LS	1	\$ 1,500.00	\$ 1,500.00
SP-2	Materials Testing	LS	1	\$ 6,000.00	\$ 6,000.00
2060-A	Mail Box Unit	LS	4	\$ 2,000.00	\$ 8,000.00
SUB-TOTAL					\$ 462,097.02

City Water Right Investment	\$	-
Water Tank Investment	\$	-
Development	\$	462,097.02
Dry Utilities	\$	50,000.00
Engineering	\$	49,400.00
City Fees	\$	12,500.00

Total Estimated Costs \$ 573,997.02

Total number of Lots: 76

Southern Hills Development - Option 2 - Division #11
 Engineers Estimate
 29-Nov-06



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ISPE #	ITEM	UNIT	QUANT	UNIT PRICE	TOTAL
	EARTHWORK				
201	Clear & Grub	AC	12.74	\$ 3,000.00	\$ 38,220.00
202	Excavation	CY	25,000	\$ 4.00	\$ 100,000.00
	WATER				
401-C1	8" Class 50 Ductile Iron Water Line	LF	2617	\$ 26.00	\$ 68,042.00
402-C	8" Resilient Seat Gate Valve & Riser	EA	8	\$ 1,200.00	\$ 9,600.00
405	PRV	EA	3	\$ 15,000.00	\$ 45,000.00
403	Fire Hydrant	EA	3	\$ 2,500.00	\$ 7,500.00
	Large Water Service	EA	0	\$ 2,200.00	\$ -
404-A	1" Single Water Service	EA	1	\$ 1,700.00	\$ 1,700.00
404-B	1" Double Water Service	EA	17	\$ 2,200.00	\$ 37,400.00
	SEWER				
501-A	8" SDR-35 PVC Sewer Line	EA	2,617	\$ 25.00	\$ 65,425.00
	Large Sewer Service	EA	0	\$ 900.00	\$ -
502	Sanitary Sewer Manhole	EA	14	\$ 2,000.00	\$ 28,000.00
504	4" Sewer Service	EA	36	\$ 900.00	\$ 32,400.00
	STORM WATER				
601-B	12" HDPE Storm Line	LF	2950	\$ 22.00	\$ 64,900.00
	Pond Structure	EA	0	\$ 10,000.00	\$ -
602-A	Storm Drain Manhole	EA	15	\$ 1,500.00	\$ 22,500.00
602-B	Storm Drain Catch Basin	EA	13	\$ 1,500.00	\$ 19,500.00
	CONCRETE				
706-A	Standard 6" Curb and Gutter	LF	4699	\$ 12.50	\$ 58,737.50
706-E	4' Sidewalk	SF	0	\$ 3.50	\$ -
	ROADWAY				
810	Plant Mix Asphalt Pavement	SF	90,999	\$ 1.65	\$ 150,148.94
810	Roadway Geotextile	SF	90,999	\$ 0.15	\$ 13,649.90
	MISC.				
1003	Temporary "V" Ditch Berm	EA	1	\$ 4,000.00	\$ 4,000.00
1005	Silt Fence	LF	2000	\$ 2.00	\$ 4,000.00
1300	Re-Vegetation	AC	2.0	\$ 1,500.00	\$ 3,000.00
SP-3	Misc. Erosion Cntrl, Incl. Staging Area	LS	1	\$ 5,000.00	\$ 5,000.00
1002-E	Stabilized Entrance	EA	1	\$ 1,500.00	\$ 1,500.00
2010	Mobilization	LS	1	\$ 4,000.00	\$ 4,000.00
SP-1	Construction Permits	LS	1	\$ 1,500.00	\$ 1,500.00
SP-2	Materials Testing	LS	1	\$ 5,000.00	\$ 5,000.00
2060-A	Mail Box Unit	LS	2	\$ 2,000.00	\$ 4,000.00
SUB-TOTAL					\$ 794,723.35

City Water Right Investment	\$	-
Water Tank Investment	\$	-
Development	\$	794,723.35
Dry Utilities	\$	60,000.00
Engineering	\$	45,500.00
City Fees	\$	15,000.00

Total Estimated Costs \$ 915,223.35

Total number of Lots: 35

Southern Hills Development - Option 2 - Division #12
Engineers Estimate
29-Nov-06



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ISPE #	ITEM	UNIT	QUANT	UNIT PRICE	TOTAL
	EARTHWORK				
201	Clear & Grub	AC	4.53	\$ 3,000.00	\$ 13,590.00
202	Excavation	CY	34,000	\$ 4.00	\$ 136,000.00
	WATER				
401-C1	8" Class 50 Ductile Iron Water Line	LF	2100	\$ 26.00	\$ 54,600.00
402-C	8" Resilient Seat Gate Valve & Riser	EA	4	\$ 1,200.00	\$ 4,800.00
405	PRV	EA	0	\$ 15,000.00	\$ -
403	Fire Hydrant	EA	5	\$ 2,500.00	\$ 12,500.00
	Large Water Service	EA	0	\$ 2,200.00	\$ -
404-A	1" Single Water Service	EA	3	\$ 1,700.00	\$ 5,100.00
404-B	1" Double Water Service	EA	18	\$ 2,200.00	\$ 39,600.00
	SEWER				
501-A	8" SDR-35 PVC Sewer Line	EA	2,100	\$ 25.00	\$ 52,500.00
	Large Sewer Service	EA	0	\$ 900.00	\$ -
502	Sanitary Sewer Manhole	EA	11	\$ 2,000.00	\$ 22,000.00
504	4" Sewer Service	EA	41	\$ 900.00	\$ 36,900.00
	STORM WATER				
601-B	12" HDPE Storm Line	LF	2400	\$ 22.00	\$ 52,800.00
	Pond Structure	EA	0	\$ 10,000.00	\$ -
602-A	Storm Drain Manhole	EA	11	\$ 1,500.00	\$ 16,500.00
602-B	Storm Drain Catch Basin	EA	7	\$ 1,500.00	\$ 10,500.00
	CONCRETE				
706-A	Standard 6" Curb and Gutter	LF	4184	\$ 12.50	\$ 52,297.25
706-E	4' Sidewalk	SF	0	\$ 3.50	\$ -
	ROADWAY				
810	Plant Mix Asphalt Pavement	SF	74,198	\$ 1.65	\$ 122,426.37
810	Roadway Geotextile	SF	74,198	\$ 0.15	\$ 11,129.67
	MISC.				
1003	Temporary "V" Ditch Berm	EA	2	\$ 4,000.00	\$ 8,000.00
1005	Silt Fence	LF	2000	\$ 2.00	\$ 4,000.00
1300	Re-Vegetation	AC	2.0	\$ 1,500.00	\$ 3,000.00
SP-3	Misc. Erosion Cntrl, Incl. Staging Area	LS	1	\$ 5,000.00	\$ 5,000.00
1002-E	Stabilized Entrance	EA	1	\$ 1,500.00	\$ 1,500.00
2010	Mobilization	LS	1	\$ 4,000.00	\$ 4,000.00
SP-1	Construction Permits	LS	1	\$ 1,500.00	\$ 1,500.00
SP-2	Materials Testing	LS	1	\$ 5,000.00	\$ 5,000.00
2060-A	Mail Box Unit	LS	3	\$ 2,000.00	\$ 6,000.00
SUB-TOTAL					\$ 681,243.29

City Water Right Investment	\$	-
Water Tank Investment	\$	-
Development	\$	681,243.29
Dry Utilities	\$	70,000.00
Engineering	\$	53,300.00
City Fees	\$	15,000.00

Total Estimated Costs \$ 819,543.29

Total number of Lots: 41

Southern Hills Development - Option 2 - Division #13
Engineers Estimate
29-Nov-06



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ISPE #	ITEM	UNIT	QUANT	UNIT PRICE	TOTAL
	EARTHWORK				
201	Clear & Grub	AC	4.53	\$ 3,000.00	\$ 13,590.00
202	Excavation	CY	20,000	\$ 4.00	\$ 80,000.00
	WATER				
401-C1	8" Class 50 Ductile Iron Water Line	LF	2100	\$ 26.00	\$ 54,600.00
402-C	8" Resilient Seat Gate Valve & Riser	EA	4	\$ 1,200.00	\$ 4,800.00
405	PRV	EA	0	\$ 15,000.00	\$ -
403	Fire Hydrant	EA	5	\$ 2,500.00	\$ 12,500.00
	Large Water Service	EA	0	\$ 2,200.00	\$ -
404-A	1" Single Water Service	EA	3	\$ 1,700.00	\$ 5,100.00
404-B	1" Double Water Service	EA	18	\$ 2,200.00	\$ 39,600.00
	SEWER				
501-A	8" SDR-35 PVC Sewer Line	EA	2,100	\$ 25.00	\$ 52,500.00
	Large Sewer Service	EA	0	\$ 900.00	\$ -
502	Sanitary Sewer Manhole	EA	11	\$ 2,000.00	\$ 22,000.00
504	4" Sewer Service	EA	41	\$ 900.00	\$ 36,900.00
	STORM WATER				
601-B	12" HDPE Storm Line	LF	2400	\$ 22.00	\$ 52,800.00
	Pond Structure	EA	0	\$ 10,000.00	\$ -
602-A	Storm Drain Manhole	EA	11	\$ 1,500.00	\$ 16,500.00
602-B	Storm Drain Catch Basin	EA	7	\$ 1,500.00	\$ 10,500.00
	CONCRETE				
706-A	Standard 6" Curb and Gutter	LF	4184	\$ 12.50	\$ 52,297.25
706-E	4' Sidewalk	SF	0	\$ 3.50	\$ -
	ROADWAY				
810	Plant Mix Asphalt Pavement	SF	74,198	\$ 1.65	\$ 122,426.37
810	Roadway Geotextile	SF	74,198	\$ 0.15	\$ 11,129.67
	MISC				
1003	Temporary "V" Ditch Berm	EA	2	\$ 4,000.00	\$ 8,000.00
1005	Silt Fence	LF	2000	\$ 2.00	\$ 4,000.00
1300	Re-Vegetation	AC	2.0	\$ 1,500.00	\$ 3,000.00
SP-3	Misc. Erosion Cntrl, Incl. Staging Area	LS	1	\$ 5,000.00	\$ 5,000.00
1002-E	Stabilized Entrance	EA	1	\$ 1,500.00	\$ 1,500.00
2010	Mobilization	LS	1	\$ 4,000.00	\$ 4,000.00
SP-1	Construction Permits	LS	1	\$ 1,500.00	\$ 1,500.00
SP-2	Materials Testing	LS	1	\$ 5,000.00	\$ 5,000.00
2060-A	Mail Box Unit	LS	3	\$ 2,000.00	\$ 6,000.00
SUB-TOTAL					\$ 625,243.29

City Water Right Investment	\$	-
Water Tank Investment	\$	-
Development	\$	625,243.29
Dry Utilities	\$	60,000.00
Engineering	\$	53,300.00
City Fees	\$	15,000.00

Total Estimated Costs \$ 753,543.29

Total number of Lots: 41

Southern Hills Development - Option 2 - Division #14
 Engineers Estimate
 29-Nov-06

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 155 South 2nd Avenue • Pocatello, ID 83201

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ISPE #	ITEM	UNIT	QUANT	UNIT PRICE	TOTAL
	EARTHWORK				
201	Clear & Grub	AC	7.51	\$ 3,000.00	\$ 22,530.00
202	Excavation	CY	65,000	\$ 4.00	\$ 260,000.00
	WATER				
401-C1	8" Class 50 Ductile Iron Water Line	LF	2238	\$ 26.00	\$ 58,188.00
402-C	8" Resilient Seat Gate Valve & Riser	EA	6	\$ 1,200.00	\$ 7,200.00
405	PRV	EA	1	\$ 15,000.00	\$ 15,000.00
403	Fire Hydrant	EA	5	\$ 2,500.00	\$ 12,500.00
	Large Water Service	EA	0	\$ 2,200.00	\$ -
404-A	1" Single Water Service	EA	2	\$ 1,700.00	\$ 3,400.00
404-B	1" Double Water Service	EA	22	\$ 2,200.00	\$ 48,400.00
	SEWER				
501-A	8" SDR-35 PVC Sewer Line	EA	2238	\$ 25.00	\$ 55,950.00
	Large Sewer Service	EA	0	\$ 900.00	\$ -
502	Sanitary Sewer Manhole	EA	14	\$ 2,000.00	\$ 28,000.00
504	4" Sewer Service	EA	44	\$ 900.00	\$ 39,600.00
	STORM WATER				
601-B	12" HDPE Storm Line	LF	2500	\$ 22.00	\$ 55,000.00
	Pond Structure	EA	0	\$ 10,000.00	\$ -
602-A	Storm Drain Manhole	EA	14	\$ 1,500.00	\$ 21,000.00
602-B	Storm Drain Catch Basin	EA	5	\$ 1,500.00	\$ 7,500.00
	CONCRETE				
706-A	Standard 6" Curb and Gutter	LF	4392	\$ 12.50	\$ 54,899.00
706-E	4' Sidewalk	SF	0	\$ 3.50	\$ -
	ROADWAY				
810	Plant Mix Asphalt Pavement	SF	71,700	\$ 1.65	\$ 118,304.60
810	Roadway Geotextile	SF	71,700	\$ 0.15	\$ 10,754.96
	MISC.				
1003	Temporary "V" Ditch Berm	EA	2	\$ 4,000.00	\$ 8,000.00
1005	Silt Fence	LF	2000	\$ 2.00	\$ 4,000.00
1300	Re-Vegetation	AC	2.0	\$ 1,500.00	\$ 3,000.00
SP-3	Misc. Erosion Cntrl, Incl. Staging Area	LS	1	\$ 5,000.00	\$ 5,000.00
1002-E	Stabilized Entrance	EA	1	\$ 1,500.00	\$ 1,500.00
2010	Mobilization	LS	1	\$ 4,000.00	\$ 4,000.00
SP-1	Construction Permits	LS	1	\$ 1,500.00	\$ 1,500.00
SP-2	Materials Testing	LS	1	\$ 5,000.00	\$ 5,000.00
2060-A	Mail Box Unit	LS	3	\$ 2,000.00	\$ 6,000.00
SUB-TOTAL					\$ 856,226.57

City Water Right Investment	\$	-
Water Tank Investment	\$	-
Development	\$	856,226.57
Dry Utilities	\$	60,000.00
Engineering	\$	57,200.00
City Fees	\$	15,000.00

Total Estimated Costs **\$ 988,426.57**

Total number of Lots: 44

Southern Hills Development - Option 2 - Division #15
 Bid Form
 29-Nov-06



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ISPE #	ITEM	UNIT	QUANT	UNIT PRICE	TOTAL
	EARTHWORK				
201	Clear & Grub	AC	14	\$ 3,000.00	\$ 42,000.00
202	Excavation	CY	48,000	\$ 4.00	\$ 192,000.00
	WATER				
401-C1	8" Class 50 Ductile Iron Water Line	LF	3916	\$ 26.00	\$ 101,816.00
402-C	8" Resilient Seat Gate Valve & Riser	EA	6	\$ 1,200.00	\$ 7,200.00
405	PRV	EA	2	\$ 15,000.00	\$ 30,000.00
403	Fire Hydrant	EA	5	\$ 2,500.00	\$ 12,500.00
	Large Water Service	EA	1	\$ 2,200.00	\$ 2,200.00
404-A	1" Single Water Service	EA	5	\$ 1,700.00	\$ 8,500.00
404-B	1" Double Water Service	EA	23	\$ 2,200.00	\$ 50,600.00
	SEWER				
501-A	8" SDR-35 PVC Sewer Line	EA	3916	\$ 25.00	\$ 97,900.00
	Large Sewer Service	EA	0	\$ 900.00	\$ -
502	Sanitary Sewer Manhole	EA	15	\$ 2,000.00	\$ 30,000.00
504	4" Sewer Service	EA	49	\$ 900.00	\$ 44,100.00
	STORM WATER				
601-B	12" HDPE Storm Line	LF	4950	\$ 22.00	\$ 108,900.00
	Pond Structure	EA	0	\$ 10,000.00	\$ -
602-A	Storm Drain Manhole	EA	16	\$ 1,500.00	\$ 24,000.00
602-B	Storm Drain Catch Basin	EA	19	\$ 1,500.00	\$ 28,500.00
	CONCRETE				
706-A	Standard 6" Curb and Gutter	LF	7777	\$ 12.50	\$ 97,215.00
706-E	4' Sidewalk	SF	120	\$ 3.50	\$ 420.00
	ROADWAY				
810	Plant Mix Asphalt Pavement	SF	189,005	\$ 1.65	\$ 311,858.91
810	Roadway Geotextile	SF	189,005	\$ 0.15	\$ 28,350.81
	MISC.				
1003	Temporary "V" Ditch Berm	EA	2	\$ 4,000.00	\$ 8,000.00
1005	Silt Fence	LF	2000	\$ 2.00	\$ 4,000.00
1300	Re-Vegetation	AC	2.0	\$ 1,500.00	\$ 3,000.00
SP-3	Misc. Erosion Cntrl, Incl. Staging Area	LS	1	\$ 5,000.00	\$ 5,000.00
1002-E	Stabilized Entrance	EA	1	\$ 1,500.00	\$ 1,500.00
2010	Mobilization	LS	1	\$ 4,000.00	\$ 4,000.00
SP-1	Construction Permits	LS	1	\$ 1,500.00	\$ 1,500.00
SP-2	Materials Testing	LS	1	\$ 6,000.00	\$ 6,000.00
2060-A	Mail Box Unit	LS	3	\$ 2,000.00	\$ 6,000.00
				SUB-TOTAL	\$ 1,257,060.72

City Water Right Investment	\$ -
Water Tank Investment	\$ -
Development	\$ 1,257,060.72
Dry Utilities	\$ 60,000.00
Engineering	\$ 63,700.00
City Fees	\$ 15,000.00

Total Estimated Costs \$ 1,395,760.72

Total number of Lots: 49

Southern Hills Development - Option 2 - Division #16
 Engineer's Estimate
 29-Nov-06



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ISPE #	ITEM	UNIT	QUANT	UNIT PRICE	TOTAL
	EARTHWORK				
201	Clear & Grub	AC	7.4	\$ 3,000.00	\$ 22,200.00
202	Excavation	CY	40,000	\$ 4.00	\$ 160,000.00
	WATER				
401-C1	8" Class 50 Ductile Iron Water Line	LF	2550	\$ 26.00	\$ 66,301.82
402-C	8" Resilient Seat Gate Valve & Riser	EA	3	\$ 1,200.00	\$ 3,600.00
405	PRV	EA	0	\$ 15,000.00	\$ -
403	Fire Hydrant	EA	5	\$ 2,500.00	\$ 12,500.00
	Large Water Service	EA	0	\$ 2,200.00	\$ -
404-A	1" Single Water Service	EA	8	\$ 1,700.00	\$ 13,600.00
404-B	1" Double Water Service	EA	12	\$ 2,200.00	\$ 26,400.00
	SEWER				
501-A	8" SDR-35 PVC Sewer Line	EA	2550	\$ 25.00	\$ 63,751.75
	Large Sewer Service	EA	0	\$ 900.00	\$ -
502	Sanitary Sewer Manhole	EA	7	\$ 2,000.00	\$ 14,000.00
504	4" Sewer Service	EA	34	\$ 900.00	\$ 30,600.00
	STORM WATER				
601-B	12" HDPE Storm Line	LF	1000	\$ 22.00	\$ 22,000.00
	Pond Structure	EA	0	\$ 10,000.00	\$ -
602-A	Storm Drain Manhole	EA	4	\$ 1,500.00	\$ 6,000.00
602-B	Storm Drain Catch Basin	EA	7	\$ 1,500.00	\$ 10,500.00
	CONCRETE				
706-A	Standard 6" Curb and Gutter	LF	4211	\$ 12.50	\$ 52,637.13
706-E	4' Sidewalk	SF	0	\$ 3.50	\$ -
	ROADWAY				
810	Plant Mix Asphalt Pavement	SF	72,000	\$ 1.65	\$ 118,800.00
810	Roadway Geotextile	SF	72,000	\$ 0.15	\$ 10,800.00
	MISC.				
1003	Temporary "V" Ditch Berm	EA	2	\$ 4,000.00	\$ 8,000.00
1005	Silt Fence	LF	2000	\$ 2.00	\$ 4,000.00
1300	Re-Vegetation	AC	2.0	\$ 1,500.00	\$ 3,000.00
SP-3	Misc. Erosion Cntrl, Incl. Staging Area	LS	1	\$ 5,000.00	\$ 5,000.00
1002-E	Stabilized Entrance	EA	1	\$ 1,500.00	\$ 1,500.00
2010	Mobilization	LS	1	\$ 4,000.00	\$ 4,000.00
SP-1	Construction Permits	LS	1	\$ 1,500.00	\$ 1,500.00
SP-2	Materials Testing	LS	1	\$ 5,000.00	\$ 5,000.00
2060-A	Mail Box Unit	LS	2	\$ 2,000.00	\$ 4,000.00
SUB-TOTAL					\$ 669,690.70

City Water Right Investment	\$ -
Water Tank Investment	\$ -
Development	\$ 669,690.70
Dry Utilities	\$ 60,000.00
Engineering	\$ 44,200.00
City Fees	\$ 15,000.00

Total Estimated Costs \$ 788,890.70

Total number of Lots: 34

Southern Hills Development - Option - Division #17
 Engineer's Estimate
 29-Nov-06



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ISPE #	ITEM	UNIT	QUANT	UNIT PRICE	TOTAL
	EARTHWORK				
201	Clear & Grub	AC	0	\$ 3,000.00	\$ -
202	Excavation	CY	0	\$ 4.00	\$ -
	WATER				
401-C1	8" Class 50 Ductile Iron Water Line	LF	0	\$ 26.00	\$ -
402-C	8" Resilient Seat Gate Valve & Riser	EA	0	\$ 1,200.00	\$ -
405	PRV	EA	0	\$ 15,000.00	\$ -
403	Fire Hydrant	EA	0	\$ 2,500.00	\$ -
	Large Water Service	EA	0	\$ 2,200.00	\$ -
404-A	1" Single Water Service	EA	0	\$ 1,700.00	\$ -
404-B	1" Double Water Service	EA	0	\$ 2,200.00	\$ -
	SEWER				
501-A	8" SDR-35 PVC Sewer Line	EA	0	\$ 25.00	\$ -
	Large Sewer Service	EA	0	\$ 900.00	\$ -
502	Sanitary Sewer Manhole	EA	0	\$ 2,000.00	\$ -
504	4" Sewer Service	EA	0	\$ 900.00	\$ -
	STORM WATER				
601-B	12" HDPE Storm Line	LF	0	\$ 22.00	\$ -
	Pond Structure	EA	0	\$ 10,000.00	\$ -
602-A	Storm Drain Manhole	EA	0	\$ 1,500.00	\$ -
602-B	Storm Drain Catch Basin	EA	0	\$ 1,500.00	\$ -
	CONCRETE				
706-A	Standard 6" Curb and Gutter	LF	0	\$ 12.50	\$ -
706-E	4' Sidewalk	SF	0	\$ 3.50	\$ -
	ROADWAY				
810	Plant Mix Asphalt Pavement	SF	0	\$ 1.65	\$ -
810	Roadway Geotextile	SF	0	\$ 0.15	\$ -
	MISC.				
1003	Temporary "V" Ditch Berm	EA	0	\$ 4,000.00	\$ -
1005	Silt Fence	LF	0	\$ 2.00	\$ -
1300	Re-Vegetation	AC	0.0	\$ 1,500.00	\$ -
SP-3	Misc. Erosion Cntrl, Incl. Staging Area	LS	0	\$ 5,000.00	\$ -
1002-E	Stabilized Entrance	EA	0	\$ 1,500.00	\$ -
2010	Mobilization	LS	0	\$ 4,000.00	\$ -
SP-1	Construction Permits	LS	0	\$ 1,500.00	\$ -
SP-2	Materials Testing	LS	0	\$ 5,000.00	\$ -
2060-A	Mail Box Unit	LS	0	\$ 2,000.00	\$ -
SUB-TOTAL					\$ -

City Water Right Investment	\$	-
Water Tank Investment	\$	-
Development	\$	-
Dry Utilities	\$	60,000.00
Engineering	\$	150,000.00
City Fees	\$	40,000.00

SUB-TOTAL

Total Estimated Costs \$ 250,000.00

Commercial (1,210532 s.f.)

Southern Hills Development - Option 2 - Division #1
 Engineer's Estimate
 14-Feb-06



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ISPE #	ITEM	UNIT	QUANT	UNIT PRICE	TOTAL
	EARTHWORK				
201	Clear & Grub	AC	0	\$ 3,000.00	\$ -
202	Excavation	CY	0	\$ 4.00	\$ -
	WATER				
401-C1	8" Class 50 Ductile Iron Water Line	LF	0	\$ 26.00	\$ -
402-C	8" Resilient Seat Gate Valve & Riser	EA	0	\$ 1,200.00	\$ -
405	PRV	EA	0	\$ 15,000.00	\$ -
403	Fire Hydrant	EA	0	\$ 2,500.00	\$ -
	Large Water Service	EA	0	\$ 2,200.00	\$ -
404-A	1" Single Water Service	EA	0	\$ 1,700.00	\$ -
404-B	1" Double Water Service	EA	0	\$ 2,200.00	\$ -
	SEWER				
501-A	8" SDR-35 PVC Sewer Line	EA	0	\$ 25.00	\$ -
	Large Sewer Service	EA	0	\$ 900.00	\$ -
502	Sanitary Sewer Manhole	EA	0	\$ 2,000.00	\$ -
504	4" Sewer Service	EA	0	\$ 900.00	\$ -
	STORM WATER				
601-B	12" HDPE Storm Line	LF	0	\$ 22.00	\$ -
	Pond Structure	EA	0	\$ 10,000.00	\$ -
602-A	Storm Drain Manhole	EA	0	\$ 1,500.00	\$ -
602-B	Storm Drain Catch Basin	EA	0	\$ 1,500.00	\$ -
	CONCRETE				
706-A	Standard 6" Curb and Gutter	LF	0	\$ 12.50	\$ -
706-E	4' Sidewalk	SF	0	\$ 3.50	\$ -
	ROADWAY				
810	Plant Mix Asphalt Pavement	SF	0	\$ 1.65	\$ -
810	Roadway Geotextile	SF	0	\$ 0.15	\$ -
	MISC				
1003	Temporary "V" Ditch Berm	EA	0	\$ 4,000.00	\$ -
1005	Silt Fence	LF	0	\$ 2.00	\$ -
1300	Re-Vegetation	AC	0.0	\$ 1,500.00	\$ -
SP-3	Misc. Erosion Cntrl, Incl. Staging Area	LS	0	\$ 5,000.00	\$ -
1002-E	Stabilized Entrance	EA	0	\$ 1,500.00	\$ -
2010	Mobilization	LS	0	\$ 4,000.00	\$ -
SP-1	Construction Permits	LS	0	\$ 1,500.00	\$ -
SP-2	Materials Testing	LS	0	\$ 5,000.00	\$ -
2060-A	Mail Box Unit	LS	0	\$ 2,000.00	\$ -
SUB-TOTAL					\$ -

City Water Right Investment	\$ -
Water Tank Investment	\$ -
Development	\$ -
Dry Utilities	\$ -
Engineering	\$ 50,000.00
City Fees	\$ 20,000.00
SUB-TOTAL	

Total Estimated Costs \$ 70,000.00

Commercial (531432 s.f.)